



Citation: *JB v Canada Employment Insurance Commission*, 2025 SST 125

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: J. B.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated January 24, 2025
(GE-24-4100)

Tribunal member: Solange Losier

Decision date: February 18, 2025

File number: AD-25-95

Decision

[1] Leave (permission) to appeal is refused. The appeal will not proceed.

Overview

[2] J. B. is the Claimant in this case. He established a claim for Employment Insurance sickness benefits on December 9, 2018.

[3] The Canada Employment Insurance Commission (Commission) found out that the Claimant was out of Canada while on claim.¹ It retroactively decided that he wasn't entitled to get benefits for the period that he was out of Canada and found he hadn't proven he was "otherwise available for work," but for his illness.² This resulted in a disentitlement to benefits and an overpayment.³ The Claimant appealed to the General Division.

[4] The General Division allowed the Claimant's appeal in part.⁴ It found that he had proven he was otherwise available for work, but for his illness. However, it also found that he wasn't entitled to get benefits while outside of Canada. It decided that the Commission was permitted to reconsider the claim within 72 months because he had made false statements in his claim reports.⁵ So, the overpayment remained repayable.

[5] The Claimant is now asking for permission to appeal.⁶ I am denying his request for permission to appeal because it has no reasonable chance of success.

¹ See page AD4-1. The *Canada Border Services Agency* (CBSA) reported to the Commission that the Claimant was out of Canada, returning on March 29, 2019.

² See Commission's initial decision and reconsideration decision at pages GD3-79 to GD3-83 and GD3-90 to GD3-92.

³ See notice of debt at pages GD3-84 to GD3-85.

⁴ See General Division decision at pages AD1-11 to AD1-18.

⁵ Section 52(2) of the *Employment Insurance Act* allows the Commission to extend the time to reconsider a claim to 72 months if they are in the opinion that a false or misleading statement or representation has been made.

⁶ See Application to the Appeal Division at pages AD1-1 to AD1-18.

Issues

[6] Is there an arguable case that the General Division made an error of jurisdiction or based its decision on an important error of fact?

Analysis

[7] An appeal can proceed only if the Appeal Division gives permission to appeal.⁷ I must be satisfied that the appeal has a reasonable chance of success.⁸ This means that there must be some arguable ground that the appeal might succeed.⁹

[8] I can only consider certain types of errors. I have to focus on whether the General Division could have made one or more of the relevant errors (this is called the “grounds of appeal”).¹⁰ The possible grounds of appeal to the Appeal Division are that the General Division did one of the following:

- proceeded in a way that was unfair
- acted beyond its powers or refused to exercise those powers
- made an error in law
- based its decision on an important error of fact.

[9] For the appeal to proceed to the next steps, the Claimant has to have a reasonable chance of success on one of the above grounds of appeal.

I am not giving the Claimant permission to appeal

[10] In his application to the Appeal Division, the Claimant says the following:¹¹

- He was naïve about the whole process
- If he had known that being outside of Canada would disentitle him from receiving benefits, he could have returned because his course was online

⁷ See section 56(1) of the *Department of Employment and Social Development* (DESD Act).

⁸ See section 58(2) of the DESD Act.

⁹ See *Osaj v Canada (Attorney General)*, 2016 FC 115, at paragraph 12.

¹⁰ See section 58(1) of the DESD Act.

¹¹ See page AD1-3.

- He was honest before the General Division about his financial circumstances
- He wants the Commission to write off his overpayment debt due to financial hardship.

[11] I've considered whether the General Division based its decision on an important error of fact or made an error of jurisdiction.

– **There is no arguable case that the General Division based its decision on an important error of fact**

[12] An error of fact happens when the General Division has “based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it.”¹²

[13] The law says that a claimant is **not entitled** to receive benefits for any period during which the claimant is not in Canada “except as may otherwise be prescribed.”¹³ There is a list of the specific exceptions available.¹⁴

[14] The Claimant in this case applied for and collected sickness benefits. The law says that if a claimant is unable to work because of an illness or injury (or quarantine), they have to show that they are “otherwise available for work.”¹⁵

[15] The General Division accepted that the Claimant was out of Canada from December 27, 2018, to March 30, 2019, to attend a course in the United States. The Claimant didn't dispute the above.¹⁶

[16] The General Division considered whether the Claimant had met any of the exceptions in law to get benefits while he was outside of Canada. It found that attending a course in the United States was not an exception in law.¹⁷ It concluded that the

¹² See section 58(1)(c) of the DESD Act.

¹³ See section 37(b) of the EI Act.

¹⁴ See section 55(1) of the *Employment Insurance Regulations* (EI Regulations).

¹⁵ See section 18(1)(b) of the EI Act.

¹⁶ See paragraphs 19–20 of the General Division decision.

¹⁷ See paragraphs 19–20 of the General Division decision.

disentitlement to benefits for the period from December 27, 2018, to March 30, 2019, would remain.¹⁸

[17] The General Division also found that the Commission could reconsider the claim for benefits within the 72-month period because he had made false representations in his claim reports (for the period he was outside of Canada).¹⁹ It determined that the Commission had reconsidered within the 72-month period because it issued its decision on May 17, 2024.²⁰

[18] To support its position, it explained that the Canada Border Services Agency told the Commission he was outside of Canada, and in the United States returning on March 30, 2019.²¹ It relied on his claim reports which show that the statements he made were false.²²

[19] However, the General Division did find in his favour on the otherwise available issue. It explained that he had in fact shown that he would have been otherwise available for work, but for his illness.²³

[20] The Claimant's arguments to the Appeal Division are essentially the same ones he made to the General Division. The General Division explained with reasons why it made the decision it did. The Appeal Division has a limited mandate, so I can't reweigh the evidence in order to come to a different conclusion that is more favourable for him.²⁴ Also, a disagreement with the outcome isn't a reviewable error.

[21] There is no arguable case that the General Division based its decision on an important error of fact.²⁵ Its key findings are consistent with the evidence before it. I am

¹⁸ See paragraph 20 of the General Division decision.

¹⁹ See section 52(2) of the EI Act and paragraph 16 of the General Division decision.

²⁰ See paragraphs 15–16 of the General Division decision.

²¹ See paragraphs 14 and 18 of the General Division decision and page GD3-68.

²² See claim reports at pages GD3-17 to GD3-64.

²³ See paragraphs 21–35 of the General Division decision.

²⁴ See *Garvey v Canada (Attorney General)*, 2018 FCA 118, at paragraph 11.

²⁵ See section 58(1)(c) of the DESD Act.

satisfied that the General Division didn't misinterpret or fail to consider any relevant evidence.²⁶

– **There is no arguable case that the General Division made an error of jurisdiction**

[22] An error of jurisdiction means that the General Division didn't decide an issue it had to decide or decided an issue it didn't have the authority to decide.²⁷

[23] The only issues before the General Division were the out of Canada and otherwise available for work.²⁸

[24] The file shows that there was a notice of debt issued for the overpayment of benefits.²⁹

[25] The Claimant argues that he was honest about his financial circumstances and wants the Commission to write off his overpayment debt. He noted that he was naïve about the process.

[26] The General Division addressed the above arguments in its decision. It found that it had no authority to write off the debt, and that it could not change the law, but he could still ask the Commission for a write-off.³⁰

[27] The General Division and the Appeal Division don't have the power in law to write off the overpayment.³¹ Only the Commission has the power to do that.³² The Claimant can still ask the Commission to write off the overpayment based on hardship (he needs to make his request to them, and not the Tribunal). He can also ask the Canada Revenue Agency to enter into a repayment plan.³³

²⁶ The Federal Court recommends such a review in *Karadeolian v Canada (Attorney General)*, 2016 FC 165, at paragraph 10.

²⁷ See section 58(1)(a) of the DESD Act.

²⁸ See pages GD3-79 to GD3-83 and GD3-92. Also, see sections 112 and 113 of the EI Act.

²⁹ See page GD3-84.

³⁰ See paragraphs 36–43 of the General Division decision.

³¹ See section 56 of the *EI Regulations*.

³² See section 112.1 of the *EI Act* and *Canada (Attorney General) v Villeneuve*, 2005 FCA 440 at paragraph 16.

³³ The Canada Revenue Agency's Debt Management Call Centre can be reached at 1-866-864-5823.

[28] There is no arguable case that the General Division made an error of jurisdiction.³⁴ It only decided the issues it had the power to decide (the out of Canada + otherwise available issue) and didn't decide any issues that it had no power to decide (the overpayment write off).

Conclusion

[29] Permission to appeal is refused. This means that the Claimant's appeal will not proceed.

Solange Losier
Member, Appeal Division

³⁴ See section 58(1)(a) of the DESD Act.