



Citation: *JL v Canada Employment Insurance Commission*, 2025 SST 288

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: J. L.
Representative: B. L.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated February 18, 2025
(GE-24-547)

Tribunal member: Stephen Bergen

Decision date: March 26, 2025

File number: AD-25-187

Decision

[1] I am refusing leave (permission) to appeal. The appeal will not proceed.

Overview

[2] J. L. is the Applicant. I will call him the Claimant because this appeal concerns his claim for Employment Insurance (EI) benefits. The Respondent is the Canada Employment Insurance Commission, which I will call the Commission.

[3] The Claimant applied for EI benefits on September 28, 2020. He then elected to begin receiving his Canada Pension Plan (CPP) pension while he was on benefits. However, he did not declare his pension payments as income in his weekly EI claims. When the Commission learned about his CPP payments, it decided that they were earnings and it allocated the CPP earnings to weeks of benefits from November 1, 2020, to September 11, 2021. This meant that the Claimant had to repay a portion of the EI benefits he received.

[4] The Claimant disagreed with the Commission's decision and asked it to reconsider. The Commission would not change its decision, so the Claimant appealed to the General Division of the Social Security Tribunal (Tribunal).

[5] The General Division allowed the appeal in part. It decided that the Claimant's CPP should be allocated beginning in December 2020—and not November 2020 as the Commission had done. But it otherwise confirmed that the Commission was correct to consider the Claimant's CPP benefits as earnings and to allocate it to weeks of benefits. The Claimant appealed to the Appeal Division.

[6] The Appeal Division did not find any error of fact or law in the General Division decision, but the Claimant had raised a Charter issue at the General Division. The Appeal Division decided that the General Division had acted unfairly by not giving the Claimant the opportunity to meet the technical requirements of (or "perfect") his Charter challenge. The Appeal Division returned the matter to the General Division so that the

Claimant might have a fair opportunity to perfect his Charter Challenge and so that the General Division could reconsider the Claimant's Charter challenge.

[7] The second General Division process gave the Claimant the opportunity to perfect his challenge, but the Claimant failed to do so, and the General Division eventually dismissed the appeal.

[8] The Claimant is now asking the Appeal Division for permission to appeal once again.

[9] I am refusing permission to appeal. The Claimant has not made out an arguable case that the General Division made any of the errors that I may consider.

Issue

[10] Is there an arguable case that the General Division made an error that I can consider?

I am not giving the Claimant permission to appeal

General Principles

[11] For the Claimant's application for leave to appeal to succeed, his reasons for appealing would have to fit within the "grounds of appeal." The grounds of appeal identify the kinds of errors that I can consider.

[12] I may consider only the following errors:

- a) The General Division hearing process was not fair in some way.
- b) The General Division did not decide an issue that it should have decided. Or, it decided something it did not have the power to decide (error of jurisdiction).
- c) The General Division based its decision on an important error of fact.
- d) The General Division made an error of law when making its decision.¹

¹ This is a plain-language version of the grounds of appeal. The full text is in section 58(1) of the *Department of Employment and Social Development Act* (DESDA).

[13] To grant this application for leave and permit the appeal process to move forward, I must find that there is a reasonable chance of success on one or more grounds of appeal. Other court decisions have equated a reasonable chance of success to an “arguable case.”²

Did the General Division make an error that I can consider?

[14] The Claimant wrote to the Appeal Division on March 9, 2025, to raise his concerns with decisions of the General Division and the Commission.³ This was accepted by the Appeal Division as expressing his intention to apply for permission to appeal, which was confirmed in the Claimant’s subsequent correspondence.⁴

[15] The Claimant omitted to indicate his ground of appeal, or explain what error he thought the General Division made. However, he did give his reasons for appealing. The Claimant believes that his overpayment to the Commission should have been forgiven or written-off due to financial hardship, under section 56 of the *Employment Insurance Regulations* (Regulations). He also maintains that his section 15(1) equality rights were violated. Both of these issues were addressed in some fashion in the General Division decision.

– Write-off of debt

[16] The original General Division decision suggested that the Claimant could ask the Commission to write off his debt. I reminded the Claimant of this in my January 30, 2024, Appeal Division decision.

[17] At his second General Division hearing, the Claimant filed letters he had written to Service Canada and to the Appeal Division, in which he requested a write-off due to financial hardship.

² See *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; and *Ingram v Canada (Attorney General)*, 2017 FC 259.

³ See AD1.

⁴ See AD1B.

[18] The February 18, 2025, decision of the General Division responded by explaining again why it could not write off his debt to the Commission. It stated that it did not have the jurisdiction to address this issue.

[19] There is no arguable case that the General Division made an error in finding that it had no jurisdiction to consider or decide write-off requests under section 56 of the Regulations.

[20] The General Division explained that only the Commission may write off debts. It explained that the Commission is not allowed to reconsider its own decision, if it decides not to write-off a debt. Finally, it noted that only the Commission's reconsideration decisions may be appealed to the General Division.⁵ This means that there is no way for the General Division to hear an appeal of a write-off decision.

– **Charter issue**

[21] I had returned the matter to the General Division because the first General Division process did not take care to ensure the Claimant had a fair opportunity to bring his asserted Charter challenge. The nature of that challenge was obscure, but the Claimant argued to the General Division that the Commission violated his equality rights under section 15(1) of the *Canadian Charter of Rights and Freedoms*.

[22] There is no arguable case that the General Division failed to give the Claimant a fair opportunity to bring forward his Charter challenge.

[23] The second General Division member detailed the efforts that it made between February 2024 and February 2025 to assist the Claimant to perfect his Charter Challenge Notice.⁶ These efforts were extensive. Even so, the Claimant did not submit materials to satisfy the Charter Notice requirements.

⁵ See para 33 of the General Division.

⁶ See paras 11–20 of the General Division decision.

[24] There is no arguable case that the General Division made an error of jurisdiction by not considering whether the write-off provisions of the *Employment Insurance Regulations* (Regulations) violate his Charter rights.

[25] As noted in the January 30, 2024, Appeal Division decision, the General Division may only consider those Charter challenges that are properly before it. This means that the Claimant had to file a Charter notice with the Tribunal, and also comply with the service requirements. Since the Claimant did not do these things, the General Division did not have jurisdiction to consider the Charter issue.

[26] That means that the General Division properly refused to consider the Charter challenge. There is no Charter decision for me to review.

[27] The Claimant's appeal has no reasonable chance of success.

Conclusion

[28] I am refusing permission to appeal is refused. This means that the appeal will not proceed.

Stephen Bergen
Member, Appeal Division