



Citation: *RF v Canada Employment Insurance Commission*, 2025 SST 296

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: R. F.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated November 15, 2024
(GE-24-261)

Tribunal member: Stephen Bergen

Decision date: **March 27, 2025**

File number: AD-24-842

Decision

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

Overview

[2] R. F. is the Applicant. I will call him the Claimant because this application concerns his claim for the Employment Insurance Emergency Response Benefit (EI-ERB). The Respondent is the Canada Employment Insurance Commission, which I will refer to as the Commission.

[3] The Claimant received regular EI benefits under another claim before he received the EI-ERB benefit. Under his claim for regular benefits, the Claimant's benefits were deferred as the result of additional amounts his employer had paid him because of his separation from employment. These additional amounts were allocated, and the Claimant's benefit period was extended.¹ The Claimant received his full 38-week entitlement to regular benefits.

[4] He was in receipt of regular benefits until May 30, 2024. When those benefits were exhausted, he began to receive the EI-ERB benefit.

[5] Under the EI-ERB program, claimants were entitled to a \$500.00 weekly benefit if they met the requirements. To get benefits to claimants more quickly, the Commission also paid out a \$2,000.00 to claimants as an advance on the EI-ERB benefits to which they would be eligible in later weeks. However, the Commission expected to recover the advance by withholding the payment of four weeks of EI-ERB benefits later in the claim.

[6] The Claimant received 16 weeks of EI-ERB in the 18 weeks from May 31, 2020, to October 3, 2020, when the EI-ERB program ended. The Commission withheld payment for the other two weeks in that period; the week of August 16 to 22, and the week of August 23 to August 29.

¹ This was one of the principal issues in the Appeal Division decision for AD-24-843.

[7] However, the Commission did not get a chance to recover the additional two weeks (\$1,000.00) by withholding benefits because the EI-ERB program ended. Instead, it declared an overpayment of \$1,000.00, which it told the Claimant he would have to repay.

[8] The Claimant disagreed with this and asked the Commission to reconsider. The Commission would not change its decision, so he appealed to the General Division of the Social Security Tribunal (Tribunal). The General Division dismissed his appeal.

[9] The Claimant is now asking the Appeal Division for leave (permission) to appeal the General Division.

[10] I am refusing permission to appeal. The Claimant has no reasonable chance of success in his appeal. He has not made out an arguable case that the General Division made an error that I can consider.

Issue

[11] The issue in this appeal is:

- a) Is there an arguable case that the General Division made an error of procedural fairness?
- b) Is there an arguable case that the General Division made an error of jurisdiction?
- c) Is there an arguable case that the General Division made an error of law?
- d) Is there an arguable case that the General Division made an important error of fact?

I am not giving the Claimant leave to appeal

General Principles

[12] 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.

[13] 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.²

[14] 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."³

[15] The Claimant selected all of the available grounds of appeal in his application to the Appeal Division. However, his appeal materials were prepared for three separate appeals that were heard in one hearing. As a result, his application in this appeal appears to include all of the same materials. The Claimant has made little effort to distinguish the grounds of appeal or asserted errors that are specific to this particular application from the grounds of appeal or errors that he asserted for his other two appeals.

[16] This makes it difficult, but not impossible, to address all of the relevant arguments.

² 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).

³ See *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; and *Ingram v Canada (Attorney General)*, 2017 FC 259.

Error of Procedural fairness

[17] The Claimant's fairness concerns about the Tribunal's processes and the General Division member are common to all of his appeals.

[18] The Claimant argued procedural fairness at the hearing of his appeal in AD-24-843, but that was not the basis on which he was granted leave to appeal. My decision in that appeal was that the General Division process had been fair. I found that the Claimant had not established that his right to be heard was denied or that the member was biased.

[19] I refer the Claimant to my March 21, 2025, decision in the AD-24-843 appeal, where the question of procedural fairness was fully addressed.⁴ I will not repeat the reasons for my decision here, but they are equally applicable to this appeal.

[20] For the purpose of this application, I will add that the Claimant has not made out even an "arguable case," that the General Division process was procedurally unfair.

Error of Jurisdiction

[21] There is no arguable case that the General Division made an error of jurisdiction.

[22] This appeal arises from the General Division's decision in the appeal of the July 5, 2023, reconsideration decision. The only issues in that reconsideration decision were the Claimant's weeks of EI-ERB entitlement, and the overpayment that resulted from the Commission's inability to fully recover the initial \$2,000.00 advance.

[23] The General Division has jurisdiction to consider only those issues arising from the reconsideration decision.⁵ It makes an error of jurisdiction if it goes beyond the issues with which the reconsideration decision was concerned or if it fails to consider all of its issues.

⁴ A March 24, 2025, Corrigendum to this decision was also issued.

⁵ See section 113 of the EI Act.

[24] The General Division addressed the period of the Claimant's EI-ERB entitlement and his overpayment. It did not consider other issues.

[25] So far as the General Division's jurisdiction to consider how the Claimant's regular benefit claim affected his EI-ERB benefits, or how the General Division interpreted the CRA "insurable earnings" decision, the General Division was clear that it was considering only the issues arising from the EI-ERB reconsideration decision. I refer the Claimant again to the decision in AD-24-843 for a broader consideration of the jurisdictional issues involving his other appeals.

Error of Law

[26] There is no arguable case that the General Division made an error of law.

[27] The Claimant has not identified any error of law in how the General Division decided on his EI-ERB entitlement.

[28] The EI-ERB benefit was first offered on March 15, 2020. The Claimant applied for regular benefits again on June 2, 2020, but his claim was automatically processed as EI-ERB and he met the eligibility criteria.⁶ However, he was not allowed to receive the EI-ERB benefits from March 15, 2020. He could not receive the EI-ERB until his regular benefits were exhausted.⁷ He did not exhaust his regular benefits until May 30, 2020, so his EI-ERB benefits could not start until May 31, 2020.

[29] *The Employment Insurance Act* (EI Act) authorizes the Commission to prepay benefits as an advance on a claimant's EI-ERB benefit entitlement.⁸ When the Claimant's EI-ERB was approved, the Commission paid him \$2,000.00 as an advance, which was equivalent to four weeks of benefits. This was not an *additional* benefit. It was meant to be offset by the Claimant's future entitlement to EI-ERB. Where the Commission was unable to offset some portion of the advance by withholding benefits, it had to recover it in another way. That is why the Commission declared an

⁶ See definition of EI-ERB "claimant" under section 153.5(2)(d) of the EI Act.

⁷ See section 153.9(2) of the EI Act.

⁸ See 153.7(1.1) of the EI Act.

overpayment for two weeks of the Claimant's advance: It had not been able to offset those two weeks by the time the EI-ERB program ended.

[30] The law authorizes the recovery of overpayments of EI-ERB benefits.⁹

Error of fact

[31] There is no arguable case that the General Division made an important error of fact.

[32] The General Division considered that the Commission paid the Claimant a \$2,000.00 advance, and also paid him sixteen weeks of the EI-ERB benefit (\$500.00) for each week. It noted that the Commission had been able to recover two weeks of the EI-ERB advance, but not the remaining two weeks. The Claimant did not dispute these facts.

[33] Some of the Claimant's arguments are associated with his appeal of the allocation. He believes that his EI-ERB claim should have started earlier.¹⁰ However, given my findings in AD-24-843, I am unable to find that there is an arguable case that the General Division made an error of fact by starting the Claimant's EI-ERB claim effective May 31, 2020.

[34] The Claimant identified certain arguments through his comments on a marked-up copy of the General Division decision which is the subject of this appeal. Some of those arguments are specific to the issues in this appeal.

[35] I have dealt with some of the issues from the Claimant's markup comments in the AD-24-843 Appeal Division decision. I addressed the "error" concerned with whether the Claimant was presenting three appeals or a single appeal,¹¹ as well as the Claimant's argument that the member was relying on a summary document.¹²

⁹ S. 153.1301 of the EI Act.

¹⁰ See AD1-25, markup at para 15, 17 and 28.

¹¹ See AD1-25, markup at para 9.

¹² See AD1-25, markup at para 12.

[36] The Claimant's markup comments on paragraphs 21, 24, and 30 of the General Division decision are concerned with the General Division's statement that he received a total of 20 weeks of benefits. The Claimant notes that there are only 18 weeks between when he began to receive the EI-ERB and when the program ended.

[37] The Claimant's comments misunderstand the decision. The General Division obtained the "20 weeks of benefits" by including **both the 16 weeks** of benefits paid weekly, as well as **the four-week** \$2,000.00 advance. The Commission's full-text screen accounting (FTS) shows a period of 18 weeks, with no benefits paid during two of those, so it shows 16 weeks that were paid weekly.¹³ The \$2,000.00 advance was paid at the outset. It was not associated with particular weeks and does not appear on the FTS.

[38] The Claimant's comments at paragraphs 15, 27, and 28, relate to his argument that he should have been able to start receiving the EI-ERB benefit earlier. I have already considered and dismissed that argument in the AD-24-843 decision.

[39] The Claimant also commented on what the General Division said about the Canada Recovery Benefit (CRB) that was paid by CRA after October 4, 2020, which were paid through the Canada Revenue Agency (CRA). He said that the Commission told CRA what he received as EI-ERB benefits, but that it recouped that payment.

[40] I am unsure of these comments relate to the General Division's statement. I can say that whatever the Commission may have told CRA or whatever it did to recoup payments is irrelevant to this appeal. This appeal is about whether the General Division made an error in how it considered the Claimant's **entitlement** to EI-ERB benefits, and about his **obligation** to repay two weeks' worth of benefits from the EI-ERB advance.

[41] The Claimant has not pointed to any other error in the General Division decision (GE-24-261), that I may consider in this application. His appeal has no reasonable chance of success.

¹³ See GD3-18.

Conclusion

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

Stephen Bergen
Member, Appeal Division