



[TRANSLATION]

Citation: *Canada Employment Insurance Commission v SC*, 2025 SST 536

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: Canada Employment Insurance Commission
Representative: Érelégna Bernard

Respondent: S. C.

Decision under appeal: General Division decision dated February 24, 2025
(GE-22-2356)

Tribunal member: Pierre Lafontaine

Decision date: May 22, 2025

File number: AD-25-228

Decision

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

Overview

[2] On March 19, 2020, the Respondent (Claimant) applied for Employment Insurance benefits, after he stopped working on March 16, 2020. A benefit period was established effective March 15, 2020, so that the Claimant could receive the Employment Insurance Emergency Response Benefit (EI ERB). He was also paid an advance of \$2,000 in EI ERB.

[3] Later, the Applicant (Commission) asked the Claimant to repay the \$2,000 advance. According to the Commission, the Claimant was eligible to receive 7 weeks of EI ERB benefits, but had received 11 weeks. The Claimant disagreed and appealed to the Tribunal's General Division.

[4] At the hearing, the Claimant's representative confirmed that the Claimant applied for a stay of proceedings, which he had initially served in an email to the General Division on April 18, 2024, and reiterated during the case conferences held on May 31, 2024, and November 1, 2024.

[5] The General Division determined that it was authorized to hear the Claimant's application to stay the proceedings. However, it denied the Claimant's application. It determined that the Claimant was eligible to receive 7 weeks of EI ERB benefits, but had received 11 weeks. Therefore, he received a \$2,000 overpayment. The General Division concluded that he has to repay the \$2,000 to the Commission.

[6] The Commission is asking the Appeal Division for leave to appeal the General Division's decision. It submits that the General Division was not authorized to hear an application for a stay of proceedings.

[7] I have to decide whether there is an arguable case that the General Division made a reviewable error based on which the appeal has a reasonable chance of success.

[8] I am refusing leave to appeal because the Commission has not raised a ground of appeal based on which the appeal has a reasonable chance of success.

Issue

[9] Does the Commission's appeal have a reasonable chance of success based on a reviewable error committed by the General Division?

Analysis

[10] The law specifies the only grounds of appeal of a General Division decision. These reviewable errors are the following:

1. The General Division hearing process was not fair in some way.
2. 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.
3. The General Division based its decision on an important error of fact.
4. The General Division made an error of law when making its decision.

[11] An application for leave to appeal is a preliminary step to a hearing on the merits. It's an initial hurdle for the Commission to meet, but it's lower than the one that must be met on the hearing of the appeal on the merits. At the leave to appeal stage, the Commission does not have to prove its case but must establish that its appeal has a reasonable chance of success. In other words, that there is arguably some reviewable error on which the appeal might succeed.

[12] I will grant leave to appeal if I am satisfied that at least one of the Commission's stated grounds of appeal gives the appeal a reasonable chance of success.

Does the Commission's appeal have a reasonable chance of success based on a reviewable error committed by the General Division?

[13] The Commission maintains that the General Division does not have jurisdiction over the application for a stay of proceedings presented by the Claimant.

[14] The Commission maintains that, even though it was successful at the first instance, the General Division's interlocutory decision can be appealed because section 55 of the *Department of Employment and Social Development Act* (DESD Act) provides that "any decision of the General Division may be appealed to the Appeal Division by any person who is the subject of the decision and any other prescribed person."

[15] On June 6, 2022, the Commission maintained its initial decision that the Claimant had received more EI ERB benefits than he was entitled to. The Claimant disagreed with the reconsideration decision and appealed the decision before the Tribunal's General Division.¹

[16] The General Division determined that it was authorized to hear the Claimant's application to stay the proceedings. However, it denied the Claimant's application. It determined that the Claimant was eligible to receive 7 weeks of EI ERB benefits, but had received 11 weeks. Therefore, he received a \$2,000 overpayment. The General Division concluded that he has to pay the \$2,000 to the Commission.

[17] The Claimant did not seek leave to appeal the decision of the Tribunal's General Division before the Appeal Division.

[18] The law states that the Appeal Division must refuse leave to appeal if it is satisfied that the appeal has no reasonable chance of success.²

¹ Section 113 of the *Employment Insurance Act* states that a party who is dissatisfied with a reconsideration decision of the Commission may appeal the decision to the Tribunal's General Division.

² See section 58(2) of the *Department of Employment and Social Development Act*.

[19] In my opinion, there is no longer a live controversy or concrete dispute between the parties, since the issue before the General Division has been settled. The General Division found that the Claimant has to repay the \$2,000 EI ERB overpayment. The Claimant did not appeal the General Division's decision.

[20] Therefore, the application to stay proceedings that was denied by the General Division can't be used as a basis for supporting an otherwise moot appeal.³ Whether the application to stay proceedings is denied on the ground of insufficient evidence or lack of jurisdiction won't affect the parties' rights.

[21] The fact that the Tribunal's jurisdiction to hear an application for a stay of proceedings may remain live in other cases before the Tribunal does not prevent that issue from being moot between the parties.⁴

[22] Nevertheless, could the Tribunal exercise discretion to hear the Commission's appeal?

[23] The requirement of an adversarial context is a fundamental tenet of our legal system and helps guarantee that issues are well and fully argued by parties who have a stake in the outcome. As previously noted, it appears that this requirement can't be met in this case, as the Claimant did not appeal the General Division's decision and, despite the Tribunal's invitation, did not intervene before the Appeal Division to argue the question of jurisdiction.

[24] It would not be warranted for the Tribunal to expend judicial resources in this case, given the circumstances. It would be preferable to wait and determine the point in a genuine adversarial context.

³ *Borowski v Canada (Attorney General)*, 1989 CanLII 123 (SCC), *Doucet-Boudreau v Nova Scotia (Minister of Education)*, 2003 SCC 62.

⁴ *Lukács v Canadian Transportation Agency*, 2013 FCA 169.

[25] I also note that the issue doesn't fall outside the scope of judicial review, as the Appeal Division has on several occasions been asked to determine whether proceedings should be stayed in cases involving an adversarial context.⁵

[26] Considering these factors, I don't see how the Appeal Division could exercise its discretion to hear the Commission's appeal.

[27] I don't believe that the General Division committed a reviewable error when it confirmed the Commission's reconsideration decision on June 6, 2022, in accordance with the powers given by section 54(1) of the DESD Act. The evidence supports the General Division's conclusion on the issue presented to it, namely that the Claimant has to repay the \$2,000 EI ERB overpayment. I find that the appeal has no reasonable chance of success.

Conclusion

[28] Leave to appeal is refused. The appeal will not proceed.

Pierre Lafontaine
Appeal Division Member

⁵ The majority of the Appeal Division appears to recognize the Tribunal's jurisdiction to decide an application for a stay of proceedings: See *KS v Canada Employment Insurance Commission*, 2024 SST 160; *VA v Canada Employment Insurance Commission*, 2018 SST 783; *CG v Minister of Employment and Social Development*, 2017 CanLII 77164; *DB v Canada Employment Insurance Commission*, 2016 CanLII 104009; *Canada Employment Insurance Commission v RT*, 2015 SSTAD 1156; *DL v Canada Employment Insurance Commission*, 2014 SSTAD 333; and *NM v Canada Employment Insurance Commission*, 2014 SSTAD 287. On the contrary, see: *SW v Canada Employment Insurance Commission*, 2018 SST 672.