



Citation: *SM v Canada Employment Insurance Commission*, 2025 SST 903

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: S. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated July 15, 2025
(GE-25-2016)

Tribunal member: Glenn Betteridge

Decision date: August 29, 2025

File number: AD-25-538

Decision

[1] I'm not giving S. M. leave (permission) to appeal. This means his appeal won't go forward. And the General Division decision stands unchanged.

[2] He can ask the Canada Employment Insurance Commission (Commission) to write off his overpayment based on the error he says the Commission made.

Separately, I'm recommending the Commission consider writing-off his overpayment because of financial hardship.

Overview

[3] S. M. is the Claimant in this case. He wants permission to appeal a General Division decision. I can give him permission if he has a reasonable chance of winning his appeal.

[4] New parents can split a maximum of 40 weeks of standard parental benefits.¹ The Claimant and his spouse each applied for 20 weeks. Then they changed their minds. And wanted 35 weeks for the Claimant and 5 for his spouse. The Claimant says they each called the Commission to make the change. The Commission paid him 35 weeks but still paid his spouse 20 weeks—55 weeks total.

[5] The General Division decided the Commission acted judicially and in time when it reconsidered his claim.² It also decided the Claimant got 15 weeks of benefits he wasn't legally entitled to get. This left him with an overpayment of \$7,725. And the General Division found it had no power to write off the overpayment. So, it dismissed his appeal.

[6] The Claimant says the General Division didn't follow a fair procedure, made a jurisdictional error, and made an important factual error.

¹ See sections 23(4) and 23(4.1)(a) of the *Employment Insurance Act* (EI Act).

² Section 52 of the EI Act gives the Commission the power to reconsider a claim and puts limits on the reconsideration power.

[7] Unfortunately for the Claimant, there isn't an arguable case the General Division made an error that gives him a reasonable chance of winning his appeal.

Issue

[8] Does the Claimant's appeal have a reasonable chance of success?

I'm not giving the Claimant permission to appeal

[9] Before making my decision, I read the Claimant's application to appeal.³ I read the General Division decision. And I reviewed the documents in the General Division file.⁴

[10] For the reasons that follow, I can't give the Claimant permission to appeal.

The permission to appeal test screens out appeals without a reasonable chance of success⁵

[11] I can give the Claimant permission to appeal if there's an **arguable case the General Division made an error** upon which the **appeal might succeed**.⁶

[12] The law lets me consider **four types of errors**.⁷ The General Division used an unfair procedure, or made a jurisdictional error, a legal error, or an important factual error.

The Claimant hasn't shown an arguable case the General Division made an error

[13] The Claimant checked the boxes that say the General Division didn't follow a fair procedure, made a jurisdictional error, and made an important factual error. Then he explains:

³ See AD1.

⁴ See GD2, GD3, and GD4.

⁵ See section 58(2) of the *Department of Employment and Social Development Act* (DESD Act); and *Paradis v Canada (Attorney General)*, 2016 FC 1282 at paragraph 32.

⁶ See *Osaj v Canada (Attorney General)*, 2016 FC 11.

⁷ See section 58(1) of the DESD Act.

In General Division, just repeated several times that i was not eligible to receive that benefits that I applied. I have question: How and why I received that benefits that I requested legally and confirmed via EI agents?

[14] These reasons don't explain any potential General Division errors. When a claimant doesn't explain or give details, a ground of appeal has no reasonable chance of success.⁸ So the Claimant hasn't shown the General Division used an unfair process, or made a legal or important factual error.

I didn't find an arguable case the General Division made an error⁹

[15] There's no arguable case the General Division made a jurisdictional error. Jurisdiction means the General Division's authority or duty to decide an issue. The General Division correctly identified the three issues it had to decide (see paragraphs 10 to 12 of the Decision). Then it decided those issues, and no other.

[16] There's no arguable case the General Division made a legal error. The General Division

- cited then used the correct law about the Commission's power to reconsider a claim (paragraphs 7, 13 to 16, and 18 to 20)
- cited then used the correct law about the maximum weeks of combined parental benefits a couple can get (paragraphs 26 and 28)
- correctly explained the Commission—not the Tribunal—has the power to write off an overpayment (paragraphs 38 and 39)
- wrote adequate reasons to explain its decision

⁸ See *Twardowski v Canada (Attorney General)*, 2024 FC 1326 at paragraph 59.

⁹ The Federal Court has said the Appeal Division shouldn't apply the leave to appeal test mechanistically and should review the General Division record. See for example *Griffin v Canada (Attorney General)*, 2016 FC 874; *Karadeolian v Canada (Attorney General)*, 2016 FC 615; and *Joseph v Canada (Attorney General)*, 2017 FC 391.

[17] Finally, there's no arguable case the General Division made an important factual error. In other words, the General Division didn't reach its decision by ignoring or misunderstanding legally relevant evidence.

[18] The legally relevant evidence in this case was straightforward and uncontested. I reviewed the documents in the General Division file. Then compared that evidence to the evidence the General Division considered to decide the issues it had to decide. I didn't find any relevant evidence the General Division ignored or misunderstood. This tells me the General Division decision is supported by the relevant evidence.

[19] The Claimant says the Commission made an error when it didn't change his spouse's claim to 5 weeks of benefits. But that fact isn't legally relevant to an issue the General Division had the power to decide. And the Claimant's calculation of the appropriate overpayment goes against the law. So that evidence isn't legally relevant.

[20] However, the Claimant's evidence about these two things might be relevant to the Commission's power to write off his overpayment.

Writing off the overpayment (debt): information for the Claimant and my recommendation to the Commission

[21] Only the Commission has the power to write off an overpayment (and interest).

[22] Section 56(2)(b)(i) of the Employment Insurance Regulations

(EI Regulations) lets the Commission write off an overpayment when the Commission made **a claim processing error**. The Claimant says his spouse asked the Commission to change her claim from 20 to 5 weeks, but it didn't do that. This might count as a claim processing error. If he hasn't already done so, **the Claimant can write to the Commission and ask it to write off his overpayment under this section, for that reason**. The Commission should make a decision and send him a letter.

[23] Separately, I'm recommending the Commission consider writing off the Claimant's overpayment under **section 56(1)(f)(ii) of the EI Regulations**. That section

lets the Commission write off an overpayment when **repayment would cause undue hardship for a claimant**. Undue hardship is often called financial hardship.

[24] The Commission has a form to document and process Appeal Division write off recommendations.¹⁰ The Commission should complete this form and send it to the Canada Revenue Agency (CRA), along with this decision.

[25] The CRA collects debts for the Commission. It has a collection policy.¹¹ The policy says what financial hardship means. And it sets out the information the CRA needs from a person, which the Commission will use to decide whether collecting the overpayment will cause financial hardship.

[26] The Claimant can contact the Commission to follow up on my recommendation.

Conclusion

[27] The Claimant's appeal doesn't have a reasonable chance of success. So his appeal won't go forward.

[28] But the Commission has the power to write off the overpayment (debt). He can contact the Commission to ask for a write-off because the Commission made an error. Separately, I recommend the Commission consider writing off the overpayment based on financial hardship.

Glenn Betteridge
Member, Appeal Division

¹⁰ See form *ESDC S&P5018 (2017-07-008) E*.

¹¹ See CRA, *IC13-2R1, Government programs collection policies*, available at www.canada.ca/en/revenue-agency/services/forms-publications/publications/ic13-2.html.