



[TRANSLATION]

Citation: *AR v Canada Employment Insurance Commission*, 2025 SST 859

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: A. R.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated
July 2, 2025 (GE-25-1708)

Tribunal member: Pierre Lafontaine

Decision date: August 15, 2025

File number: AD-25-512

Decision

[1] Permission to appeal is refused. The appeal won't go ahead.

Overview

[2] The Applicant (Claimant) applied for Employment Insurance (EI) benefits as of April 7, 2020. A claim for the Employment Insurance Emergency Response Benefit (EI ERB) was established. After this, the Respondent (Commission) paid him the \$2,000 advance payment and the EI ERB. In total, the Commission paid him \$14,606 in the EI ERB, including the advance payment.

[3] The Commission later found that the Claimant didn't qualify because he hadn't earned a minimum of \$5,000 in 2019, and he hadn't worked for a minimum of 700 hours. He had 320 hours of insurable employment, for a total of \$4,656.01. The Commission found that he had to pay back the EI ERB overpayment.

[4] On reconsideration, the Commission upheld its initial decision. The Claimant appealed to the Tribunal's General Division.

[5] The General Division found that the Claimant didn't qualify because he had earnings under \$5,000, and he didn't have enough hours. He should not have been paid the EI ERB that he had received. He had to pay back the overpayment.

[6] The Claimant is asking the Appeal Division for permission to appeal the General Division decision. He finds the General Division decision to be unfair. He argues that the Commission initially refused his application. He then turned to social assistance, where his application was accepted. He later received another letter from the Commission saying that his application had been accepted. The Claimant argues that he can't be held responsible for the Commission's error.

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

[8] I am refusing permission to appeal because the Claimant hasn't raised a ground of appeal based on which the appeal has a reasonable chance of success.

Issue

[9] Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

Analysis

[10] The law specifies the only grounds of appeal of a General Division decision.¹ These reviewable errors are the following:

1. The General Division hearing process wasn't fair in some way.
2. The General Division didn't decide an issue that it should have decided. Or, it decided something it didn't 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 permission to appeal is a preliminary step to a hearing on the merits. It is an initial hurdle for the Claimant to meet, but it is lower than the one that has to be met at the hearing of the appeal on the merits. At the permission to appeal stage, the Claimant doesn't have to prove his case; he has to instead establish that his appeal has a reasonable chance of success. This means that he has to show that there is arguably a reviewable error based on which the appeal might succeed.

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

¹ See section 58(1) of the *Department of Employment and Social Development Act*.

Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

[13] The Claimant finds the General Division decision to be unfair. He argues that the Commission initially refused his application. He then turned to social assistance, where his application was accepted. He later received another letter from the Commission saying that his application had been accepted. The Claimant argues that he can't be held responsible for the Commission's error.

[14] Before the General Division, the Claimant argued that he had paid taxes on the \$14,606, that he hadn't been able to participate in the provincial Social Solidarity Program—resulting in \$7,579 in losses—and that the Commission was alone responsible for the error. He also argued that the Commission hadn't considered his health, given that he had alopecia universalis and was mentally affected by it.

[15] On April 7, 2020, the Claimant applied for EI regular benefits. A claim for the EI ERB was established.

[16] As the General Division noted, the government introduced temporary measures during the pandemic. Between March 15 and September 26, 2020, all applications for EI regular benefits were processed as applications for the EI ERB.² So, if someone applied for EI regular benefits and their benefit period started during that time, they would have received the EI ERB. The law didn't let you choose benefits during that period.

[17] The General Division found that the Claimant didn't qualify because he had earnings under \$5,000, and he didn't have enough hours. He should not have been paid the EI ERB he had received. He had to pay back the overpayment.

² See sections 153.5(3)(a), 153.8(5), and 153.1310 of the *Employment Insurance Act* (Act).

[18] I note that the legislation in force during the pandemic allowed the Commission to reconsider whether you received an amount of the EI ERB that you weren't eligible for. The law is clear that you have to pay back the overpayment.³

[19] Also, Federal Court of Appeal case law has established that when you receive an amount that you aren't eligible for—**even if the Commission made an error**—you have to pay back the amount.⁴

[20] So, the General Division made no reviewable error when it found that the Claimant had to pay back the EI ERB overpayment. Unfortunately, the law doesn't allow any discrepancies and gives the Tribunal no discretion to write off the amount to be paid back—even for compassionate reasons.

[21] I have great sympathy for the Claimant. But the Tribunal doesn't have jurisdiction to order compensation for the loss of income that the Commission's alleged error caused. This is a debate for another tribunal.⁵

[22] As the General Division noted, the Claimant can contact the Canada Revenue Agency to discuss payment arrangements. Or, he can bring the issue of the Commission refusing to write off the debt before the Federal Court of Canada.⁶

[23] Regarding the impact the overpayment has on taxes, the Claimant will have to contact the appropriate government authorities to correct his situation.

[24] For the above reasons, and after reviewing the appeal file, the General Division decision, and the Claimant's arguments in support of his application for permission to

³ See sections 44, 52, and 153.6(1)(a) of the Act. See also *Al-Harbawi v Canada (Attorney General)*, 2024 FCA 148; and *Molchan v Canada (Attorney General)*, 2024 FCA 46. The Federal Court of Appeal has established that a claimant's personal circumstances are irrelevant in analyzing the Commission's use of discretion. Nothing on file shows that, in using its discretion, the Commission didn't consider relevant information or considered irrelevant information, or that it acted in bad faith or in a discriminatory manner. The Commission acted for a proper purpose in reconsidering whether the Claimant was eligible for benefits.

⁴ See *Lanuzo v Canada (Attorney General)*, 2005 FCA 324.

⁵ See *TT v Canada Employment Insurance Commission*, 2018 SST 43; *Canada (Attorney General) v Romero*, A-815-96; and *Canada (Attorney General) v Tjong*, A-672-95.

⁶ See section 56 of the *Employment Insurance Regulations*.

appeal, I find that the appeal has no reasonable chance of success. The Claimant hasn't raised any issue that could justify setting aside the decision under review.

Conclusion

[25] Permission to appeal is refused. The appeal won't go ahead.

Pierre Lafontaine
Member, Appeal Division