



Citation: *OS v Canada Employment Insurance Commission*, 2025 SST 182

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: O. S.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated February 7, 2025
(GE-25-201)

Tribunal member: Solange Losier

Decision date: March 3, 2025

File number: AD-25-131

Decision

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

Overview

[2] O. S. is the Claimant in this case. He applied for benefits and got Employment Insurance Emergency Response Benefit (EI ERB) for several weeks. He also got an advance lump sum payment of \$2,000.00.

[3] The Canada Employment Insurance Commission (Commission) first decided that the Claimant was overpaid EI ERB. This resulted in an overpayment of benefits. They reconsidered the claim and determined that he was actually entitled to one additional week of EI ERB, so that reduced his overall overpayment.¹

[4] The General Division dismissed the Claimant's appeal.² It found that he wasn't entitled to get the EI ERB advance payment because he wasn't unemployed long to collect the money. Because of that, it found he was liable to repay the overpayment.

[5] The Claimant is now asking for permission to appeal to the Appeal Division.³ He argues that the General Division made an error of law and error of fact in its decision.⁴

[6] I am refusing the Claimant's request for permission to appeal because it has no reasonable chance of success.

Issue

[7] Is there an arguable case that the General Division made an error of law or based its decision on an important error of fact?

¹ See Commission's reconsideration decision at page GD3-36.

² See General Division's decision at pages ADN1A-1 to ADN1A-5.

³ See Application to the Appeal Division at pages ADN1-1 to ADN1-13.

⁴ There was some procedural history with this file. It was previously returned to the General Division for reconsideration based on an agreement between the parties (see files GE-24-3692 and AD-24-820).

Analysis

[8] An appeal can proceed only if the Appeal Division gives permission to appeal.⁵ I must be satisfied that the appeal has a reasonable chance of success.⁶ This means that there must be some arguable ground that the appeal might succeed.⁷

[9] The possible grounds of appeal to the Appeal Division are that the General Division:⁸

- proceeded in a way that was unfair;
- acted beyond its powers or refused to exercise those powers;
- made an error of law;
- based its decision on an important error of fact.

I am not giving the Claimant permission to appeal

[10] The Claimant argues that General Division erred in the following ways:⁹

- The overpayment happened because Service Canada made an error
- The overpayment is not \$1,500.00, but only \$1,418.89, so this was an error
- He got a letter from Service Canada on February 19, 2025, that says they have the authority to write off the overpayment
- Repayment would cause him undue hardship because he is a low-income worker
- The Commission is responsible and they should take accountability for their “false decision”

⁵ See section 56(1) of the *Department of Employment and Social Development Act* (DESD Act).

⁶ See section 58(2) of the DESD Act.

⁷ See *Osaj v Canada (Attorney General)*, 2016 FC 115, at paragraph 12.

⁸ See section 58(1) of the DESD Act.

⁹ See pages ADN1-4 to ADN1-5.

– **There is no arguable case that the General Division made an error of law**

[11] An error of law can happen when the General Division does not apply the correct law or uses the correct law but misunderstands what it means or how to apply it.¹⁰

[12] The General Division correctly stated the law and relied on relevant case law in its decision.¹¹ It referred to the correct provisions dealing with EI ERB and its jurisdiction around overpayments.¹²

[13] The General Division properly stated that even if the Commission made a mistake in his case, it still has to apply the law.¹³

[14] The General Division also acknowledged the Claimant's hardship argument but correctly stated that the Tribunal does not have the power to write off the overpayment debt because only the Commission can make that decision.¹⁴ It explained that he could ask the Commission to forgive all or part of the overpayment debt due to financial hardship or discuss repayment options with the Canada Revenue Agency.¹⁵

[15] The Federal Court has confirmed that writing off an overpayment debt is solely within the jurisdiction of the Commission.¹⁶

[16] The Claimant's reference to a recent letter he got from Service Canada on February 19, 2025—appears to be about writing off his overpayment. He needs to follow up with the Commission about this, not the Tribunal. And if he's not satisfied with the decision the Commission makes about the write off, his recourse is to seek judicial review at the Federal Court.

¹⁰ See section 58(1)(b) of the DESD Act.

¹¹ See paragraphs 8, 13, 15, and 17–18 of the General Division decision.

¹² See sections 153.7 (1.1) and 153.8 (1) of the *Employment Insurance Act* (EI Act).

¹³ See *Robinson v Canada (Attorney General)*, 2013 FCA 255, at paragraphs 9 and 11.

¹⁴ See sections 44 and 112.1 of the EI Act and paragraph 15 of the General Division decision.

¹⁵ See paragraph 18 of the General Division decision.

¹⁶ See *Canada (Attorney General) v Villeneuve*, 2005 FCA 440 at paragraph 16 and section 56 of the *Employment Insurance Regulations*.

[17] There is no arguable case that the General Division made an error of law.¹⁷ It correctly cited the law and relevant case law in its decision. The Claimant needs to follow up with the Commission about writing off the overpayment or seek judicial review at the Federal Court if the Commission has already made a decision about it.

– **There is no arguable case that the General Division based its decision on an important error of fact**

[18] An error of fact happens when the General Division has “based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it.”¹⁸

[19] I’ll start by reviewing the General Division’s key findings first.

[20] The General Division had to first decide how many weeks of EI-ERB he received versus how many he was entitled to receive.

[21] The evidence shows that the Claimant collected EI ERB for 7 weeks from April 12, 2020, to May 30, 2020, at \$500.00 per week. He also got a \$2,000.00 advance payment of EI ERB issued on April 20, 2020.¹⁹ The advance payment of EI ERB represents 4 weeks of benefits at \$500.00 per week.

[22] The General Division concluded that the Claimant got 7 weeks of EI ERB + 4 weeks of EI ERB (this is the advance payment), totalling 11 weeks of EI ERB.²⁰ It found that the Claimant had returned to work on June 1, 2020.²¹ These facts weren’t disputed by the Claimant.²²

[23] The General Division decided that he was overpaid \$2,000.00 in EI ERB for the advance payment because he had already returned to work, so he never claimed

¹⁷ See section 58(1)(b) of the DESD Act.

¹⁸ See section 58(1)(c) of the DESD Act.

¹⁹ See paragraph 14 of the General Division decision.

²⁰ See paragraph 11 of the General Division decision.

²¹ See paragraph 12 of the General Division decision.

²² See paragraph 10 of the General Division decision.

benefits for the weeks that the advance payment was supposed to cover. Essentially, it found that he wasn't unemployed long enough to collect the benefits.²³

[24] The General Division also noted that the Commission on reconsideration decided that he was entitled to one additional week of EI ERB at \$500.00. Because of that, the Commission applied it to his existing overpayment and it was reduced to \$1500.00.²⁴

[25] There is no arguable case that the General Division based its decision on an important error of fact.²⁵ The Claimant got more EI ERB than he was entitled to get, so he is liable to repay the overpayment.

[26] I would also add that it isn't arguable that the General Division erred in fact when it concluded that he was overpaid and was liable to repay \$1500.00.²⁶ That is what he owed—at the time. His current debt may be a different amount or lesser amount for other reasons (i.e., payments made or collected, interest, etc.).

– There are no other reasons for giving the Claimant permission to appeal

[27] I reviewed the file, and examined the General Division decision. The General Division did not misinterpret or fail to consider any relevant evidence.²⁷ It correctly stated the law and case law. Its key findings were consistent with the facts and evidence in the record.

Conclusion

[28] Permission to appeal is refused. This means the Claimant's appeal will not proceed. It has no reasonable chance of success.

Solange Losier
Member, Appeal Division

²³ See paragraph 2 of the General Division decision.

²⁴ See page GD3-36.

²⁵ See section 58(1)(c) of the DESD Act.

²⁶ See paragraph 16 of the General Division decision.

²⁷ The Federal Court has suggested such a review in decisions like *Griffin v Canada (Attorney General)*, 2016 FC 874 and *Karadeolian v Canada (Attorney General)*, 2016 FC 615.