

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20240918**

**Docket: A-223-22**

**Citation: 2024 FCA 148**

**CORAM: STRATAS J.A.  
LASKIN J.A.  
BIRINGER J.A.**

**BETWEEN:**

**MOHAMMED AL-HARBAWI**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

Heard at Ottawa, Ontario, on September 18, 2024.  
Judgment delivered from the Bench at Ottawa, Ontario, on September 18, 2024.

**REASONS FOR JUDGMENT OF THE COURT BY:**

**LASKIN J.A.**

Federal Court of Appeal



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**REASONS FOR JUDGMENT OF THE COURT**  
**(Delivered from the Bench at Ottawa, Ontario, on September 18, 2024)**

**LASKIN J.A.**

[1] The applicant, Mr. AL-Harbawi, was paid employment insurance benefits of \$595 per week based on a record of employment issued by his former employer. One day after issuing that ROE, the employer issued an amended ROE, correcting an error. Based on the amended ROE, his benefit entitlement was reduced to \$500 per week.

[2] However, it was not until some nine months after the employer's submission of the amended ROE that the Canada Employment Insurance Commission reconsidered Mr. AL-Harbawi's benefits. By that time, an overpayment had built up in the amount of \$3,895. The Commission sent him a notice of debt in that amount.

[3] Mr. AL-Harbawi requested that the Commission reconsider. It declined to do so. He then appealed to the General Division – Employment Insurance Section of the Social Security Tribunal. It allowed the appeal, finding that the Commission had not acted judicially when it failed to take into account Mr. AL-Harbawi's ability to pay, the stress and anxiety the overpayment had caused him, and the Commission's delay in advising of the overpayment.

[4] The Commission appealed the General Division's decision to the Appeal Division. It concluded that the General Division had made an error of law in including ability to pay and severe stress as relevant factors.

[5] The Appeal Division noted that section 52 of the *Employment Insurance Act*, S.C. 1996, c. 23, authorizes the Commission, within 36 months after benefits have been paid or would have been payable, to reconsider a claim for benefits. This authority is discretionary, and the Commission's choice as to whether to reconsider in any particular case "reflects the tension between finality ... and accuracy ..." In the absence of anything in the Act telling the Commission how to decide whether to reconsider or what factors it should take into account, the Appeal Division stated, "factors that could favour either finality or accuracy, helping to resolve that tension in a particular case, are relevant factors."

[6] The Appeal Division went on to explain why in its view personal circumstances are not relevant when the Commission decides whether to reconsider benefits. It referred to the two ways in which a claimant can avoid repaying benefits: (1) where the Commission decides on reconsideration that there is no overpayment; and (2) after an overpayment is created, through the Commission's exercise of its discretion to write off the debt granted by section 56 of the *Employment Insurance Regulations*, S.O.R./96-332. As this Court has pointed out, subparagraph 56(1)(f)(ii) specifically authorizes the Commission to exercise this discretion where "repayment ... would result in undue hardship to the debtor": *Molchan v. Canada (Attorney General)*, 2024 FCA 46 at para. 55.

[7] The Appeal Division saw this provision as signalling that the right time for the Commission to consider personal circumstances is not when deciding whether to reconsider, but when deciding whether to forgive a debt. It added that on a practical level, the Commission would not ordinarily be in a position to assess a claimant's personal circumstances at the stage of deciding whether to reconsider.

[8] The Appeal Division, therefore, concluded that the General Division had erred by requiring the Commission to consider irrelevant factors. But it was also sympathetic to Mr. AL-Harbawi's position, and recommended that Mr. AL-Harbawi be given the opportunity to make out his claim of undue hardship so that the Commission can consider it in deciding whether to write off his debt.

[9] Mr. AL-Harbawi asks us to set aside the decision of the Appeal Division. For us to do so, we would have to find that the decision does not meet the standard of reasonableness: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at para. 99; *Palozzi v. Canada (Attorney General)*, 2024 FCA 81 at para. 3. Making this determination requires asking “whether the decision bears the hallmarks of reasonableness—justification, transparency and intelligibility—and whether it is justified in relation to the relevant factual and legal constraints”: *Vavilov* at para. 99.

[10] Having assessed the Appeal Division decision against these qualities, we see no basis to conclude that it was unreasonable. We will, accordingly, dismiss the application. The Attorney General does not ask for costs, and no costs will be awarded.

[11] In his articulate oral submissions, Mr. AL-Harbawai raises the issue of general fairness to him in his circumstances. As a court bound by law, we must apply the law and we cannot act just on the basis of fairness. As mentioned during the hearing, we encourage Mr. AL-Harbawi to seek out a community law clinic for advice on the issue whether a write-off of the debt he owes is still possible. Our Registry may be able to identify community law organizations that can assist him.

“J.B. Laskin”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-223-22

**STYLE OF CAUSE:** MOHAMMED AL-HARBAWI v.  
ATTORNEY GENERAL OF  
CANADA

**PLACE OF HEARING:** BY ONLINE  
VIDEOCONFERENCE

**DATE OF HEARING:** SEPTEMBER 18, 2024

**REASONS FOR JUDGMENT OF THE COURT  
BY:** STRATAS J.A.  
LASKIN J.A.  
BIRINGER J.A.

**DELIVERED FROM THE BENCH BY:** LASKIN J.A.

**APPEARANCES:**

Mohammed AL-Harbawi FOR THE APPLICANT  
ON HIS OWN BEHALF

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