

Court File No.:

**FEDERAL COURT**

**A-54-24**

**BETWEEN:**

**HONG ZHOU**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**NOTICE OF APPLICATION FOR JUDICIAL REVIEW**

**TO THE RESPONDENT:**

**A PROCEEDING HAS BEEN COMMENCED** by the Applicant. The claim made by the Applicant appears on the following page.

**THIS APPLICATION** will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicant. The Applicant requests that this application be heard Federal Court, 180 Queen Street West, Toronto, Ontario.

**IF YOU WISH TO OPPOSE THIS APPLICATION**, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a Notice of Appearance in Form 305 prescribed by the Federal Court Rules, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, **WITHIN 10 DAYS** after being served with this Notice of Application.

Copies of the Federal Courts Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

**IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.**

DATED THIS 12<sup>th</sup> day of September 2023

Issued by: \_\_\_\_\_  
(Registry Officer)

FEDERAL COURT OF CANADA  
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Toronto, Ontario  
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TO: ATTORNEY GENERAL OF CANADA  
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**1. This is an application, pursuant to subsection 18.1 of the Federal Courts Act for judicial review of Social Security Tribunal of Canada Appeal Division AD-22-169 decision made on Aug.16 2023, in respect of:**

- **(1) Pursuant to Interim order No. 8 and No. 9, Whether 36 weeks April 2020 claim from a US commuter can be converted to 20 weeks EI-ERB without a post EI-ERB claim for a qualified US commuter claimant?” in June 2021, which was after EI-ERB deadline Dec. 2 2020.**
- **(2) Pursuant to BILL C-24 (EIA 12(2.1), EIA 12(2.2)), EIA 153.16 PART VIII.5 & EIA 153.17 (1) (b) PART VIII.5 and Interim order No. 8, as an initial regular EI claim during Sept. 27 2020 to Sept. 2021, is Jan. 31 2021 claim from a US commuter entitled for 50 weeks benefit as residents of Canada?**

***Order sought through judicial review:***

- *I am seeking April 2020 claim be restored to original 36 weeks regular EI benefit as I have not done anything wrong for the claim and the claim was approved according to proper regulations before EI-ERB was available for commuters. And the conversion without post EI-ERB claim is against Interim order No.8 and No.9.*
- *I am also seeking 12 weeks Jan. 31 2021 claim be extended to 50 weeks according to applicable regulations during Sept. 27 2020 to Sept. 25 2021.*

**2. The grounds for the application are:**

***Background:***

(1). I (Applicant: Hong Zhou) was a US commuter (residing in US near border of Canada) when I worked in Windsor ON, I've been residing in US since 2008. I have two original approved and fully paid regular EI benefit claims: April 2020 claim & Jan.31 2021 claim.

(2). April 2020 claim was established on April 12 2020, it was approved for 36 weeks regular EI benefit by the EI Commission interstate department (refer to the EI Commission in this application) in June 2020, while I was told by the EI commission that commuters were not eligible for EI-ERB since commuters are not residents of Canada. After waiting period May 17 – 23 2020, the 36 weeks benefit for period May 24 2020 – Jan. 30 2021 was fully paid before Feb. 3 2021. I did not have dispute for April 2020 claim before it was converted to 20 weeks EI-ERB by the EI Commission in June 2021. (**Note:** Government of Canada website still shows that only Canadian residents can apply for EI-ERB/CERB, there was no way to apply for EI-ERB online and through phone although I had tried.)

(3) In late Oct. 2020, my previous employer informed me that temporary layoff in April 2020 was turned to permanently. I was then issued 8 weeks insurable termination pay from Oct. 26 to Dec. 18 2020 for accounting work transit. I reported the 8 weeks insurable termination pay to Service Canada, they documented in my Service Canada profile that any termination pay

and severance pay after Sept. 2020 would not be deducted from EI benefit according to new regulation (Interim order No. 8). It was why my regular EI benefit for April 2020 claim had never been stopped from Oct. 26 to Dec. 18 2020 while I was paid 8 weeks insurable termination pay.

(4). According to instructions from Service Canada, after 36 weeks April 2020 claim benefit were fully paid on Jan. 30 2021, Jan. 31 2021 claim was established based on ROE for 8 weeks insurable termination pay. It was the first initial EI regular benefit claim established during Sept. 27 2020 and Sept. 25 2021. The EI Commission added one-time 300 insurable hour credit under EIA 153. 17 (1) (b) PART VIII.5 to allow me eligible for regular EI benefit for the Jan. 31 2021 claim, waiting period was also waived. However, it was only approved for 12 weeks regular EI benefit applied by not applicable EIR 55(7) on April 5 2021, the 50 weeks entitlement under applicable new regulations during Sept. 27 2020 to Sept. 25 2021 were not applied for the claim.

(5) On April 6 2021, I enquired the EI Commission why Jan. 31 2021 claim was not applied for 50 weeks benefit according to BILL C-24/EIA 12(2.1)(2.2). The EI Commission agent told me that he would add 20 weeks EI-ERB and move 36 weeks April 2020 claim to Oct. 4 2020 as a post EI-ERB claim, meanwhile would cancel Jan. 31 2021 claim, which would create overpayment from Jan. 31 2021 claim. I did not agree with the EI Commission agent. The EI Commission agent (who communicated with me on April 6 2021) continued to claim week 9-10 benefit for me from Jan. 31 2021 claim.

(6) Although I contacted the EI Commission and Service Canada so many times, Service Canada also escalated my enquires for Jan. 31 2021 claim many times, without any further communication, the EI Commission added 20 weeks EI-ERB and moved April 2020 claim to Oct. 4 2020 in June 2021. Jan. 31 2021 claim was cancelled by the EI commission. (Refer to letter dated on Sept. 9 2021 (GD2-22))

(7) I requested reconsideration for the decision on letter dated Sept. 9 2021 (GD2-22). The EI Commission reconsideration agent agreed that 36 weeks April 2020 claim should stay with no change. He further confirmed that any initial claims during Sept. 27 2020 to Sept. 25 2021 are entitled 50 weeks benefit according to new regulations. He said he requested initially the way he agreed for April 2020 claim and the way he confirmed for Jan. 31 2021 claim, but it was not approved. I was directed to Social Security Tribunal.

(8) Later the EI Commission claimed to the Tribunal General Division (GD) and Appeal Division (AD) that Oct. 4 2020 claim was antedated from Jan. 31 2021 claim and it was an error, it means that 36 weeks April 2020 claim was converted to 20 weeks EI-ERB without allowing post EI-ERB claim by the EI Commission.

(9) Social Security Tribunal both General Division and Appeal Division members agreed and decided that 36 weeks April 2020 claim must be converted to 20 weeks EI-ERB in June 2021

without establishing post EI-ERB claim, they decided EI-ERB deadline Dec. 2 2020 does not apply to the conversion with no post EI-ERB claim. Despite I did not have any income from

Oct. 4 - 24 2020 and Dec. 21 2020 - Jan. 30 2021, the Tribunal GD and AD members totally ignored whether the conversion can be allowed without establishing post EI-ERB claim according to Interim order No. 8 and No. 9.

(10) Social Security Tribunal AD member decided that Jan. 31 2021 claim is being restored and was only entitled 12 weeks benefit under EIR 55 (7). 50 weeks benefit under BILL C-24/EIA 12 (2.1) & (2.2) PART I and EIA 153.16 PART VIII.5 imposed by Interim No. 8, which is temporary Measures to Facilitate Access to Benefits to supersede any related regulations before Covid – 19, were not applied for commuters' claim - Jan. 31 2021 claim. Furthermore this decision is also against Interim order No. 8 & No. 9 for extended 28 weeks qualified period.

(11) Now the Tribunal AD member decided that 36 weeks April 2020 must be converted to 20 weeks EI-ERB without post EI-ERB claim, Jan. 31 2023 claim is being restored for original 12 weeks benefit only. While all Canadian residents got max 28 weeks EI-ERB and 50 weeks post EI-ERB claims with one qualified ROE from Mar.15 - Oct. 2 2020, but commuters with same ROE got a lot less EI benefit (32 weeks only) as per decisions from the Tribunal Appeal Division, it is discrimination for commuters who work in Canada same way and pay same tax as any residents of Canada.

***The following AD decision (AD-22-169) was delivered to me on Aug. 16 2023:***

*[1]The appeal is allowed in part.*

*[2] The General Division did not make an error about the issue over whether a claim made in April 2020 by the Appellant, Hong Zhou (Claimant), should be deemed a claim for Emergency Response Benefits.*

*[3]The General Division should have addressed the arguments over reinstatement of the Claimant's January 2021 claim. But the Respondent, Canada Employment Insurance Commission (Commission), did not have any authority to cancel the January 2021 claim or any authority, for that matter, to backdate the claim to October 2020. The January 2021 claim should have been maintained throughout. I am restoring the January 2021 claim.*

*[4]As an interstate client, the Claimant was entitled to receive 12 weeks of Employment Insurance regular benefits under the January 2021 claim.*

***The Decisions are Unreasonable and not following applicable regulations during covid-19:***

As the EI Commission confirmed during AD hearing on Oct. 18 2022, commuters' regular EI benefit from Mar. 15-Oct. 2 2020 would not be converted to EI-ERB if they did not have second EI claim like me although Interim order No. 9 imposed without such condition. If some

commuters' regular EI benefit from Mar. 15 – Oct. 2 2020 do not have to be converted to EI-ERB, why did the Tribunal GD and AD members allow the EI Commission to convert 36 weeks regular EI benefit to 20 weeks EI-ERB without establishing post EI-ERB claim? Can the Tribunal GD and AD members not follow all regulations in interim No. 8 and interim order No. 9?

(1) Interim Order No. 8 sets an extension of the qualifying period by 28 weeks will be provided for those who have claimed the EI Emergency Response Benefit (EI-ERB), all claimants establishing a claim (post EI-ERB) on or after September 27, 2020. Despite I submitted in AD2-3 [“Can the GD member allow the Commission convert April 2020 claim to EI-ERB without a post EI-ERB claim for a qualified commuter claimant?”](#), the Tribunal AD member totally ignored interim order No. 8 for post EI-ERB claim with the decision to allow the EI Commission to convert 36 weeks April 2020 claim to 20 weeks EI-ERB:

- I provided AD member evidence of regulation: Interim Order No. 8 and Interim order No. 9 (no ROE needs for EI-ERB) that provides authorities to allow access to employment insurance (EI) benefits for claimants establishing new regular claims (post EI-ERB claims) starting on September 27, 2020.
- I also provided AD member information on Canada Government website (GD5-26 and GD5-27) of [“Transition from CERB to Employment Insurance \(EI\)”, It clearly stated: “If you were receiving the CERB when it ended in early October 2020, we would have automatically reviewed your file and your record of employment \(ROE\), then started a claim for EI Regular benefits if you qualified.”](#)

(2) According to Interim order No. 8 and Interim order No. 9, ROE for April 2020 claim must be used for post EI-ERB claim starting Oct. 4 2020 if EI-ERB was allowed before deadline Dec. 2 2020. Why did the Tribunal AD member allow the EI Commission to convert 36 weeks April 2020 claim to 20 weeks EI-ERB without allowing post EI-ERB starting Oct. 4 2020? I think the followings are reasons:

- If a post EI-ERB was allowed by the Tribunal AD member starting Oct. 4 2020, then the post EI-ERB claim Oct. 4 2020 must be a replacement of April 2020 claim by using ROE for April 2020 claim. It means there was no EI-ERB claim when the EI Commission moved April 2020 claim to Oct. 4 2020 in June 2021. The conversion of April 2020 claim to EI-ERB must be served as new claim added, while EI-ERB deadline Dec. 2 2020 in Interim order No. 9 (EIA 153. 8(2)) would not allow any new EI-ERB claim in June 2021.
- Interim order No. 9 states [“\(2\) A claim must not be made after December 2, 2020.”](#) If the conversion of EI-ERB in June 2021 was a new claim added, it is against Interim order No. 9, the conversion of April 2020 claim must be invalid.

(3) As for the decision of restoring Jan. 31 2021 claim with original 12 weeks benefit, the AD member refused to apply applicable regulations Bill C -24 (EIA 12(2.1) EIA12(2.2)) and interim No.8. The AD member also did not include my insurable hours from April 2019 to Oct. 2020 following the AD decision of no post EI-ERB claim allowed.

- Interim Order No. 8 sets a minimum unemployment rate of 13.1% for all EI regions that would apply until September 11, 2021, An alternative benefit rate calculation mechanism was established following the interim order, which is included in BILL C – 24 (EIA 12(2.1) EIA 12(2.2)). It means 13.1% unemployment rate in interim order No. 8 supersedes EIR 55 (7) table, no matter it has EI regions applied previously or not.
- Interpretation on Government of Canada website I submitted in GD-47 also confirms: A minimum unemployment rate of 13.1% is being applied to all EI economic regions across Canada until Sept. 11 2021. The temporary measure means that all individuals eligible for EI regular benefits (only need 120 insurable hours) will qualify for up to 50 weeks benefit. Please refer to the following screenshot in GD2-47.

9/18/21, 2:30 PM

Transition to Employment Insurance – Questions and answers - Canada.ca

**▼ Why should I care about the Minimum Unemployment Rate?  
What impact does it have for me?**

A minimum unemployment rate of 13.1% is being applied for all EI economic regions across Canada until September 11, 2021.

This temporary measure means that all individuals eligible for EI regular benefits will qualify for up to 50 weeks of benefits, and have

- The AD member misinterprets BILL C – 24 (EIA 12(2.1) & EIA 12(2.2)). EIA 12(2.2) states: [EIA 12\(2.1\) does not apply to a claimant under the Employment Insurance \(Fishing\) Regulations](#)". It means that Employment Insurance Regulation (refer to EIR 55(7) for commuters before Covid - 19) is not excluded from EIA 12(2.1). Therefore EIA 12(2.1) with 50 weeks benefit does apply to Employment Insurance Regulation 55(7). EIR 55(7) table should be replaced with EIA 12(2.1) for 50 weeks benefit as long as claimants are under Part I of EIA as per BILL C-24. Having 300 hours one-time credit added to Jan. 31 2021 claim with no dispute, the EI Commission and the Tribunal indeed commit that commuter claimants are under Part I of EIA.
- Despite 50 weeks regular EI benefit regulated by BILL C-24 (EIA 12(2.1) (2.2) and interim order No. 8, the AD member also did not follow EIR 55(7) although it was not applicable during Sept. 27 2020 to Sept. 27 2021. Because AD member allowed April 2020 claim converted to EI-ERB without post EI-ERB claim, also because EI-ERB claim does not need ROE as per interim order No. 9, with the qualifying period extension of 28 weeks by Interim order No. 8 and No. 9, Jan. 31 2021 claim should have more than 1820 insurable hours from April 2019 to Dec. 18 2020, how can Jan. 31

2021 claim was only allowed 12 weeks benefit by the AD member? Which was based on 620 insurable hours only.

- Treaty E101541 “Exchange of Notes between Canada and the United States of America Recording an Agreement Respecting Unemployment Insurance” clear states: my service provided in Canada is deemed localized. It is matched with the statement in Canada Government website I provided in AD 2-6: “if you are a commuter, your claim will be treated like that of any of residents in Canada.” However, my Jan. 31 2021 claim was not treated as described on treaty E101541 and Government of Canada website.

**3. The Applicant relies on the following applicable new regulations during Covid – 19 and statutes and rules:**

- BILL C-24/EIA 12 (2.1) & (2.2) PART I (AD5-5), Interim order No. 8 (AD5-2 & AD5-3) and Interim order No. 9 (GD2-37)
- EIA 153.16 PART VIII.5 & EIA 153. 17 (1) (b) PART VIII.5 (Temporary Measures to Facilitate Access to Benefits) (GD2-43 & GD2-44)
- Treaty E101541: Exchange of Notes Between Canada and the United States of America Recording an Agreement Respecting Unemployment Insurance (Agreement between Government of US and Canada).

**4. This Application will be supported by the following material:**

- AD Decision 08 16 2023 for file AD-22-169
- The EI Commission adjustment letter dated on Sept. 9 2021 (GD2-22) and the EI Commission reconsideration letter dated on Nov. 29 2021 (GD2-2).
- ROE for April 2020 claim (AD2-11/GD2-18), Approval of the claim (AD2-12 & AD2-13 also at GD2-16 & GD2-17) and original payment proof for April 2020 claim (AD2-14/GD5-8) on Service Canada my account.
- ROE for Jan. 31 2021 claim (AD2-8/GD2-21), Approval of the claim (AD2-9 & AD2-10 also at GD2-19 & GD2-20) and original payment proof for Jan. 31 2021 claim on Service Canada my account.
- AD01-Request for Leave to Appeal
- AD Leave Appeal Decision 07 20 2023
- AD01A – Copy of General Division Decision
- AD02, AD04, AD05 & AD 07– Appellant Submissions & Appellant Correspondence
- AD06 – Member Initiated One off letter
- Additional document for AD Oct. 30 2022

**5. Documents and recording requested by applicant Hong Zhou, that is not in the possession of the Applicant but is in the possession of Social Security Tribunal and the Commission:**

- I request AD hearing recording on Oct. 18 2022 send to federal court for judicial review: During AD Oct. 18 2022 hearing, the EI Commission committed that not all commuters’ claims during Mar. 15-Oct. 2 2020 must be converted to EI-ERB.

DATED THIS 12<sup>th</sup> day of September 2023



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The Applicant