



Citation: *MV v Canada Employment Insurance Commission*, 2023 SST 178

## **Social Security Tribunal of Canada Appeal Division**

# **Decision**

**Applicant:** M. V.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated January 5, 2023  
(GE-22-3580)

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**Tribunal member:** Jude Samson

**Decision date:** February 20, 2023

**File number:** AD-23-84

## Decision

[1] M. V. (MV) is the Applicant in this case. I'm dismissing his application to the Appeal Division as premature.

## Overview

[2] The Canada Employment Insurance Commission (Commission) decided that it overpaid MV's Employment Insurance Emergency Response Benefits by \$2,000.

[3] MV appealed the Commission's decision to the Tribunal's General Division. The General Division scheduled a hearing in MV's appeal, but MV said he needed an extra 9 to 12 months to prepare his case.<sup>1</sup> So, the General Division scheduled a case conference to discuss MV's request.

[4] During the case conference, MV accused the General Division member of bias and asked her to recuse herself. In other words, he wanted the member to remove herself from his appeal so that it could be assigned to a different member. Specifically, MV alleged that the member was rude, unprofessional, and adversarial. He also said that she made him feel uncomfortable, upset, and under attack.<sup>2</sup> MV then followed up by making the same request in writing.<sup>3</sup>

[5] In an interlocutory (interim) decision dated January 5, 2023, the General Division member refused to remove herself from the appeal. MV now wants to appeal the General Division's interlocutory decision to the Appeal Division.

[6] The Appeal Division doesn't normally hear appeals from interlocutory decisions until after the General Division has given its final decision in the appeal. There are no exceptional circumstances for departing from that approach in this case. So, I'm dismissing MV's application as premature.

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<sup>1</sup> MV's request to change the hearing date is in document GD6 of the appeal record.

<sup>2</sup> Among other times, MV made these comments starting at around 47:15 of the audio recording of the December 21, 2022, case conference.

<sup>3</sup> See documents GD10 and GD11.

## Issues

[7] This decision focuses on the following issues:

- a) Should the Appeal Division consider appeals of interlocutory decisions before the end of the General Division's process?
- b) Are there exceptional circumstances in this case that justify allowing MV's application to proceed?

## Analysis

[8] It's common for the Tribunal to make decisions throughout a proceeding. For example, someone might ask for their hearing to be rescheduled or for certain documents to be kept confidential. These are called interlocutory decisions. They're often procedural in nature. They're different from final decisions that bring an appeal to its end.

### **The Appeal Division normally refuses to hear appeals from interlocutory decisions**

[9] Any General Division decision can be appealed to the Appeal Division.<sup>4</sup> However, the Appeal Division has said that, except in exceptional circumstances, it should refuse to consider appeals of interlocutory decisions before the General Division has given its final decision in the appeal.<sup>5</sup>

[10] This doesn't mean that the Appeal Division is refusing to consider interlocutory decisions altogether. Instead, the General Division proceeding should be allowed to run its course. Then the Appeal Division can consider all issues at the same time.

[11] I agree with the reasoning in these Appeal Division decisions and have decided to follow them.

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<sup>4</sup> See section 55 of the *Department of Employment and Social Development Act*.

<sup>5</sup> See *MW v Canada Employment Insurance Commission*, 2022 SST 338 and *RP v Minister of Employment and Social Development*, 2022 SST 242.

## **There are no exceptional circumstances in this case**

[12] So, are there exceptional circumstances that justify considering MV's application now instead of waiting until the General Division gives its final decision in his appeal? If not, the application is premature.

[13] The Federal Courts and Appeal Division have said that allegations of bias don't normally amount to exceptional circumstances that justify considering an application early.<sup>6</sup> I've listened to the recording of the case conference, but I'm persuaded by these decisions and have decided to follow them.

[14] MV has other concerns about the General Division proceeding. For example, will he have enough time to prepare his case? And yet, he might be successful at the General Division level. In that case, MV might not need to file an application with the Appeal Division. Allowing MV to appeal any unfavourable interlocutory decisions along the way would unnecessarily fragment the General Division's process and lead to significant delays.

[15] In the circumstances, I've concluded that MV hasn't shown exceptional circumstances that justify considering his application now, before the General Division finally decides his appeal.

## **Conclusion**

[16] I'm dismissing MV's application as premature. The Appeal Division shouldn't normally hear appeals from interlocutory decisions until the General Division has given its final decision in the appeal. MV hasn't shown exceptional circumstances for departing from this approach in his case.

[17] Once the General Division gives its final decision, MV can, of course, bring another application to the Appeal Division. And in his application, he remains free to

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<sup>6</sup> See, for example, *Canada (Border Services Agency) v CB Powell Limited*, 2010 FCA 61, *Air Canada v Lorenz*, 1999 CanLII 9373, and *MW v Canada Employment Insurance Commission*, 2022 SST 338.

argue that the General Division member was biased and should have removed herself from his file.

Jude Samson  
Member, Appeal Division