



Citation: *EG v Canada Employment Insurance Commission*, 2024 SST 130

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

# **Leave to Appeal Decision**

**Applicant:** E. G.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated September 12, 2023  
(GE-23-2273)

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**Tribunal member:** Solange Losier

**Decision date:** February 13, 2024

**File number:** AD-23-961

## Decision

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

## Overview

[2] E. G. is the Claimant in this case. He applied for Employment Insurance (EI) regular benefits after he stopped working.

[3] The Canada Employment Insurance Commission (Commission) decided that the Claimant had received vacation pay from his employer. It said that the vacation pay was income and earnings, so it would be allocated to his EI claim from January 15, 2023 to March 18, 2023.<sup>1</sup>

[4] The General Division concluded the same.<sup>2</sup> It found that the vacation pay was income and earnings and allocated it to his EI claim from January 15, 2023 to March 18, 2023.

[5] The Claimant is now asking for permission to appeal the General Division decision to the Appeal Division.<sup>3</sup> He needs permission for the appeal to move forward.

[6] I am denying the Claimant's request for permission to appeal because it has no reasonable chance of success.<sup>4</sup>

## Preliminary matter

[7] The Claimant applied to the Appeal Division but he didn't identify the type of error that he thought the General Division made.<sup>5</sup>

[8] So, the Tribunal sent the Claimant a letter asking for more information about his appeal.<sup>6</sup> The letter provided information about the types of errors that the Appeal

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<sup>1</sup> See initial decision at pages GD3-23 to GD3-24 and reconsideration decision at page GD3-28.

<sup>2</sup> See General Division decision at pages AD1A-1 to AD1A-6.

<sup>3</sup> See application to the Appeal Division at pages AD1-1 to AD1-7.

<sup>4</sup> See section 58(2) of the *Department of Employment and Social Development Act* (DESD Act).

<sup>5</sup> See page AD1-3

<sup>6</sup> See Tribunal letter dated January 10, 2024.

Division could consider.<sup>7</sup> It asked him to identify the specific type of error or errors that the General Division made and to provide reasons to support his position. The deadline to reply to the letter was January 24, 2024.

[9] The Claimant emailed the Tribunal saying that his English wasn't "good" and asked for return call.<sup>8</sup> An email followed saying that the Claimant has an English barrier and needs a telephone call with an interpreter who speaks Arabic.<sup>9</sup>

[10] The Tribunal Navigator assigned to the file arranged a telephone call with the Claimant and an interpreter on January 26, 2024. The purpose of that call was to discuss the letter sent by the Tribunal and explain the Appeal Division process.<sup>10</sup>

[11] The Claimant was also given an extension to respond to the Tribunal letter, until February 7, 2024.<sup>11</sup> As of the date of this decision, the Claimant has not responded to the Tribunal's letter.

## **Issue**

[12] Is there an arguable case that the General Division make a reviewable error?

## **Analysis**

[13] An appeal can proceed only if the Appeal Division gives permission to appeal.<sup>12</sup>

[14] I must be satisfied that the appeal has a reasonable chance of success.<sup>13</sup> This means that there must be some arguable ground upon which the appeal might succeed.

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<sup>7</sup> See section 58(1) of the DESD which lists the "grounds of appeal".

<sup>8</sup> See page AD1B-1.

<sup>9</sup> See page AD1C-1.

<sup>10</sup> The notes on this file show that this call took place on January 26, 2024.

<sup>11</sup> See Tribunal letter dated January 22, 2024.

<sup>12</sup> See section 56(1) of the DESD Act.

<sup>13</sup> See section 58(2) of the DESD Act.

[15] The possible grounds of appeal to the Appeal Division are that the General Division:<sup>14</sup>

- 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**

[16] There is no arguable case that the General Division made a reviewable error in this case.

[17] In the Claimant's application forms to the Appeal Division, he wrote the following: "I was happy with the final decision. However, it [took] 10 weeks for a decision, which means that for 10 weeks I had no income. That is what I am appealing, payment for the 10 weeks".<sup>15</sup>

[18] The Claimant hasn't identified the type of error he thinks the General Division made, except to say that he wants payment for 10 weeks due to a delay.

[19] I understand his argument to mean that because a decision was delayed for 10 weeks, he had no income during that period and should get EI benefits for those weeks.

[20] The Tribunal's own rules say that it has to give a decision as soon as possible after the hearing.<sup>16</sup> The file shows that the General Division issued its decision promptly, 4 days after the hearing took place.<sup>17</sup>

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<sup>14</sup> See section 58(1) of the DESD Act.

<sup>15</sup> See page AD1-3.

<sup>16</sup> See section 59 of the *Social Security Tribunal Rules of Procedure* (SST Rules).

<sup>17</sup> The hearing took place on September 8, 2023 and the decision was issued September 12, 2023. It was emailed to the Commission and the Claimant on the same day, September 12, 2023.

[21] So, it isn't clear which decision the Claimant is referring to when he says it was delayed for 10 weeks. If he is referring to the Commission's delay in decision making, the Tribunal has no authority to address or resolve those concerns.

[22] As well, the General Division has no authority to give an additional 10 weeks of EI benefits on the basis of delay or financial hardship. It correctly stated in its decision it cannot rewrite the law, even in compassionate cases.<sup>18</sup>

[23] Even though the Claimant hasn't identified the type of error he thinks the General Division made, I am going to review what it decided.

[24] The General Division had to decide whether the vacation pay the Claimant got were earnings, and if so, whether they should be allocated to his EI claim.<sup>19</sup>

[25] The General Division concluded that the Claimant's vacation pay totalling \$18,321.91 were earnings and had to be allocated to his EI claim for the period from January 15, 2023 to March 18, 2023.

[26] The General Division found that based on its calculations, the Claimant's average normal weekly earnings were \$1,984.00 and not \$1,953.00 as the Commission had previously decided.<sup>20</sup>

[27] The General Division identified that neither the Claimant, nor the Commission attended the hearing.<sup>21</sup> It properly confirmed that the notice of hearing was sent by email to the parties on September 1, 2023. It relied on its authority to proceed if it was satisfied that the parties got the notice of hearing.<sup>22</sup>

[28] Based on my review, the General Division correctly stated and applied the law in its decision. Its findings are consistent with the evidence in the file. It explained with reasons why it made the decision it did. It followed a fair process.

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<sup>18</sup> See paragraph 28 of the General Division decision.

<sup>19</sup> See sections 35 and 36 of the *Employment Insurance Regulations* (EI Regulations).

<sup>20</sup> See paragraphs 19-23 and 27 of the General Division decision.

<sup>21</sup> See paragraphs 6-8 of the General Division decision.

<sup>22</sup> See section 58 of the SST Rules.

[29] I reviewed the documents in the file, examined the decision under appeal, and satisfied myself that the General Division did not misinterpret or fail to properly consider any relevant evidence.<sup>23</sup>

[30] The Appeal Division does not provide an opportunity for the parties to re-argue their case. It has a limited mandate and has to decide whether the General Division made an error under the law.<sup>24</sup>

[31] Accordingly, there is no arguable case that the General Division made a reviewable error.<sup>25</sup> This means that this appeal has no reasonable chance of success.

## **Conclusion**

[32] Permission to appeal is refused. This means that the appeal will not proceed.

Solange Losier  
Member, Appeal Division

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<sup>23</sup> See *Karadeolian v Canada (Attorney General)*, 2016 FC 165 at paragraph 10 which recommends doing such a review.

<sup>24</sup> See *Marcia v Canada (Attorney General)*, 2016 FC 1367.

<sup>25</sup> See section 58(1) of the DESD Act.