



Citation: *DS v Canada Employment Insurance Commission*, 2024 SST 342

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

# **Leave to Appeal Decision**

**Applicant:** D. S.  
**Representative:** C. J.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated December 10, 2023  
(GE-20-736)

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**Tribunal member:** Jude Samson  
**Decision date:** April 5, 2024  
**File number:** AD-24-157

## Decision

[1] The Claimant, D. S., filed an application to the Appeal Division. I'm dismissing the application as premature. The application will not proceed.

## Overview

[2] The Claimant applied for Employment Insurance (EI) regular benefits in 2017. The Canada Employment Insurance Commission (Commission) approved his application and paid him benefits.

[3] Later, the Commission reassessed the Claimant's file and concluded that he wasn't eligible for the benefits that he had received. The Commission also warned the Claimant for knowingly making false statements. The Claimant appealed the Commission's decisions to the Tribunal.

[4] As part of his appeal, the Claimant argued that certain sections of the *Employment Insurance Act*, the *Employment Insurance Regulations*, along with the Commission's actions, violated his rights under the *Canadian Charter of Rights and Freedoms* (Charter).

[5] The General Division dismissed the Claimant's Charter challenge in an interlocutory (interim) decision dated December 10, 2023 (Charter Decision). The General Division has scheduled a hearing next month to consider the merits of the Claimant's appeal.

[6] The Claimant has applied for permission to appeal the Charter Decision. I'm dismissing the Claimant's application as premature.

## 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 the Claimant's application to proceed?

## Analysis

[8] The Tribunal can make interlocutory decisions throughout a proceeding. For example, someone might ask for their hearing to be rescheduled or for documents to be kept confidential. 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>1</sup> However, the Appeal Division has the power to control its procedures. This includes the ability to not hear appeals that are premature.<sup>2</sup> For that reason, the Appeal Division has said that, except in exceptional circumstances, it will refuse to consider appeals of interlocutory decisions until the General Division has given its final decision in the appeal.<sup>3</sup>

[10] This doesn't mean that the Appeal Division refuses 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, based on a complete record.

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

[12] This conclusion is reinforced by the approach taken in the Federal Courts. They are also reluctant to hear challenges from interlocutory decisions.<sup>4</sup> The Court has said that it wants to avoid fragmented proceedings, along with the associated costs and

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<sup>1</sup> See section 55 of the DESD Act.

<sup>2</sup> See *Prassad v Canada (Minister of Employment and Immigration)*, 1989 CanLII 131.

<sup>3</sup> See *MW v Canada Employment Insurance Commission*, 2022 SST 338 and *RP v Minister of Employment and Social Development*, 2022 SST 242.

<sup>4</sup> See *Dugré v Canada (Attorney General)*, 2021 FCA 8 and *Herbert v Canada (Attorney General)*, 2022 FCA 11.

delays that can be incurred.<sup>5</sup> Plus, proceedings can become moot (irrelevant) if the person trying to challenge the interlocutory decision wins their case in the end.

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

[13] The Claimant argues that the following exceptional circumstances are present here:<sup>6</sup>

- the Tribunal provided him with contradictory information about whether to appeal the Charter Decision and about dividing the issues on appeal;
- the Tribunal delayed processing his Application to the Appeal Division;
- the Charter Decision isn't an interlocutory decision;
- efforts spent preparing the Claimant's arguments in support of his Application to the Appeal Division could be wasted; and
- the Charter Decision contains important errors of fact that the Appeal Division should correct before the General Division continues its process.

[14] The Claimant is also asking me to stay (suspend) the General Division's proceedings until this appeal is decided by the Appeal Division.

[15] I sympathize with the Claimant's concerns. However, I'm not persuaded that they amount to exceptional circumstances that warrant interfering with the General Division's process.

[16] The General Division has scheduled a hearing on the merits of the appeal. The end of its process is in sight. If the Claimant has lingering concerns about the fairness of that process, they should be addressed to the General Division so that it has a chance to address them.

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<sup>5</sup> See *Canada (Border Services Agency) v CB Powell Limited*, 2010 FCA 61 at paragraphs 32–33.

<sup>6</sup> See documents AD1B and AD1C.

[17] Allowing the Claimant to appeal the Charter Decision would unnecessarily fragment the General Division's process, lead to additional delays, and risk more back-and-forth between the General and Appeal Divisions.

[18] In fact, Courts have also said that important legal or constitutional issues are not an exceptional circumstance that justifies interfering with an ongoing proceeding.<sup>7</sup> I agree.

[19] Plus, the Claimant's arguments about the desired outcome of this appeal—correcting mistaken facts before the General Division proceeds—are speculative. The Appeal Division is unlikely to dig into every possible factual error that the Claimant raises.

[20] In terms of logistics, the Claimant will have 30 days to appeal the General Division's final decision after it's made. If he chooses to appeal that decision, the Claimant can file one Application to the Appeal Division. In his application, the Claimant should highlight any interlocutory decisions that were made throughout the process, including the Charter Decision, that he also wants to challenge.

[21] The effort that the Claimant put into this application can be re-used at that time. If it's not automatically done, the Claimant can ask for his arguments in this appeal to be copied to a future appeal.<sup>8</sup>

[22] In the circumstances, the Claimant hasn't shown exceptional circumstances that justify considering his application now. The Tribunal has to provide the Claimant with a fair process. It's not obliged to decide the Claimant's numerous and complex issues in his preferred order.

[23] The General Division should be allowed to finish its work and give a final decision in the appeal. It follows that I refuse to stay the General Division's proceeding.

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<sup>7</sup> See *Canada (Border Services Agency) v CB Powell Limited*, 2010 FCA 61 at paragraph 33.

<sup>8</sup> The Claimant's arguments are in document AD1B.

## **Conclusion**

[24] I'm dismissing the Claimant's application as premature. The Appeal Division shouldn't normally hear appeals from interlocutory decisions. The Claimant hasn't shown exceptional circumstances for proceeding sooner in his case.

Jude Samson  
Member, Appeal Division