



Citation: *TK v Canada Employment Insurance Commission*, 2024 SST 480

## Social Security Tribunal of Canada Appeal Division

# Decision

**Appellant:** T. K.

**Respondent:** Canada Employment Insurance Commission  
**Representative:** J. Villeneuve

---

**Decision under appeal:** General Division decision dated September 12, 2023  
(GE-23-1668)

---

**Tribunal member:** Jude Samson

**Type of hearing:** In Writing

**Decision date:** May 6, 2024

**File number:** AD-23-877

## Decision

[1] T. K. is the Claimant in this case. I agree that the General Division made an error when it concluded that she withdrew her appeal.

[2] I also recognize that the Claimant has legitimate questions and concerns about repaying benefits that she received. Unfortunately, however, her concerns fall outside the Tribunal's jurisdiction (powers). As a result, I have no choice but to dismiss her appeal.

## Overview

[3] The Claimant applied for Employment Insurance (EI) benefits in March 2021. The Canada Employment Insurance Commission (Commission) paid her a combination of sickness and regular benefits over the following year.

[4] On April 25, 2023, the Commission decided that the Claimant wasn't entitled to the EI benefits that she had received. The Commission sent the Claimant a notice of debt for \$20,500.

[5] The Claimant then asked the Commission to reconsider its decision. About a month later, on May 30, 2023, the Commission reversed its previous decision. As a result, the \$20,500 debt was cancelled.

[6] Regardless, the Claimant appealed the Commission's reconsideration decision to the Tribunal's General Division.<sup>1</sup> The General Division hearing was in two parts. In the first part, the Claimant asked for confirmation that the Commission had cancelled her debt. The Commission provided that confirmation and, when the hearing resumed, the General Division concluded that the Claimant withdrew her appeal.

---

<sup>1</sup> In fact, the Claimant appealed two decisions. The second appeal, which has already been decided, was about Employment Insurance Emergency Response Benefits. That appeal was given General Division file number GE-23-1670, followed by Appeal Division file number AD-23-878.

[7] The Claimant then appealed the General Division decision to the Tribunal's Appeal Division. Among other things, she argues that she didn't withdraw her appeal. I agree.

[8] The General Division's error allows me to give the decision the General Division should have given. While the Claimant is understandably frustrated by the lack of answers to her questions, they fall outside the scope of the Tribunal's powers. As a result, I have no choice but to dismiss her appeal.

### **Preliminary matters: I cannot consider new evidence**

[9] The Claimant's case is complex. She was paid different benefits at different times. Her concerns span a wide range of topics, including:

- the types of benefits she received;
- the accuracy of her tax slips (T4Es);
- conflicting information, inaccurate advice, and poor service from agents with Service Canada, the Commission, and the Canada Revenue Agency (CRA);
- the tax treatment of benefits paid to her by Ontario's Workplace Safety and Insurance Board (WSIB); and
- the preparation of her income tax returns.

[10] I asked the parties to participate in a case conference in hopes that the Commission would be able to answer some of the Claimant's questions. Unfortunately, the Claimant remains unsatisfied and frustrated by the conflicting information that she's receiving from the Commission, Service Canada, and the CRA.

[11] These attempts have also led to a great deal of new evidence that, except for specific exceptions noted below, I cannot consider as part of this decision.<sup>2</sup> Rather, my

---

<sup>2</sup> The Federal Court of Appeal described the Appeal Division's limited ability to consider new evidence in *Sibbald v Canada (Attorney General)*, 2022 FCA 157.

focus has to be on deciding whether the General Division made an error. If so, I can then give the decision that the General Division should have given. With few exceptions, these assessments are made based on the evidence that the General Division had in front of it.

## Issues

[12] The issues in this appeal are:

- a) Did the General Division base its decision on an important error of fact when it concluded that the Claimant withdrew her appeal?
- b) If so, how should I fix the error?
- c) Does the Tribunal have the power to address the Claimant's concerns?

## Analysis

[13] The law allows me to intervene in this case if the General Division “based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.”<sup>3</sup>

[14] In simpler language, I can consider the following questions when reviewing the findings (facts) that the General Division relied on to reach its decision:<sup>4</sup>

- Does the evidence squarely contradict the General Division's findings?
- Is there no evidence that could rationally support the General Division's findings?
- Did the General Division overlook critical evidence that contradicts its findings?

---

<sup>3</sup> This is in section 58(1)(c) of the *Department of Employment and Social Development Act*.

<sup>4</sup> This is a summary of the Federal Court of Appeal's decision in *Walls v Canada (Attorney General)*, 2022 FCA 47 at paragraph 41.

## **The General Division made an error when it concluded that the Claimant withdrew her appeal**

[15] The General Division concluded that the Claimant withdrew her appeal on September 12, 2023, during the second part of the hearing.

[16] The Claimant denies withdrawing her appeal. The Commission recognizes that the Claimant “might not have withdrawn her appeal.”<sup>5</sup>

[17] I’ve listened to both parts of the General Division hearing. The Claimant didn’t withdraw her appeal. There’s no evidence supporting this finding by the General Division. As a result, the General Division based its decision on an important error of fact. Viewed differently, the General Division also committed an error of law.<sup>6</sup>

[18] In reaching this conclusion, I recognize that it was a difficult hearing. The General Division member doubted the usefulness of the Claimant’s appeal given that her debt had already been cancelled. The Claimant acknowledged that the issue about her debt had been resolved.

[19] The Claimant’s concerns, however, didn’t end there. She asked the General Division to fix her tax slips and questioned the Commission’s ability to “claw back” some of her benefits. The Claimant relentlessly pursued her various concerns until the General Division member ended the hearing somewhat abruptly.

[20] While the General Division denied having the power to address the Claimant’s concerns, it couldn’t infer from the resolution of one issue—or its perceptions about the strength of the case—that the Claimant was withdrawing her appeal.

---

<sup>5</sup> See the Commission’s arguments on page AD45-2.

<sup>6</sup> In *Murphy v Canada (Attorney General)*, 2016 FC 1208 at paragraph 36, the Federal Court recognized how findings made without supporting evidence can be viewed as an error of fact or an error of law. Also, see *R v JMH*, 2011 SCC 45 at paragraph 25.

[21] An appeal can only be withdrawn by the person who started it: the appellant. And withdrawals are final decisions that can only be set aside in rare circumstances.<sup>7</sup> As a result, the Tribunal only accepts withdrawals that are clearly expressed.

[22] In the circumstances, the General Division based its decision on an error of fact (or, alternatively, made an error of law) when it concluded that the Claimant withdrew her appeal. There was no evidence on which the General Division could base that conclusion.

### **I will give the decision the General Division should have given**

[23] None of the parties seem to argue that the appeal should be returned to the General Division for reconsideration. Rather, the General Division file includes enough information for me to decide the appeal.

[24] I agree that it's appropriate for me to give the decision the General Division should have given.<sup>8</sup> Indeed, the relevant facts of the case are not especially controversial.

### **The Tribunal doesn't have the power to address the Claimant's concerns**

[25] The Claimant complains that Service Canada or the Commission should not have put a 30% repayment rate on her tax slip (T4E) for 2022. Because of this, she says that the CRA wrongly withheld monies from her tax return and that she was wrongly denied other benefits that she should have received too.

[26] The Commission argues that the Claimant's concerns are not within the Tribunal's powers to decide. It also argues that the repayment rate that appears on a T4E is of little relevance.

---

<sup>7</sup> See, for example, *CE v Canada Employment Insurance Commission and X*, 2021 SST 25.

<sup>8</sup> Sections 59(1) and 64(1) of the *Department of Employment and Social Development Act* give me the power to fix the General Division's error in this way. Also, see *Nelson v Canada (Attorney General)*, 2019 FCA 222 at paragraphs 16–18.

[27] The Commission maintains that the repayment rate appearing on T4E slips is related to the “Benefit Repayment” (or “claw back”) sections in Part VII of the *Employment Insurance Act*. Part VII is not about benefits that were overpaid. Rather, it’s about people having to repay up to 30% of the benefits that they received in a given year if their income is over a certain threshold.

[28] According to the Commission, not everyone who receives a T4E with a 30% repayment rate marked on it will, in fact, have to repay 30% of their benefits. Rather, the actual amount to be repaid is determined when a person files their taxes, and is calculated based on the person’s total income, using a formula on the back of the T4E.<sup>9</sup>

**Repayment chart**

Fill in this chart if the rate in box 7 is 30% and, on your return, the total of lines 21300 and 23400 plus the amount of registered disability savings plan (RDSP) income repayment included on line 23200, minus the total of lines 11700 and 12500 is more than \$70,375.

Enter the amount from box 15 minus any amount from box 30 (if negative, enter "0")	0
Total of amounts on lines 21300 and 23400 <b>plus</b> the amount of RDSP included on line 23200 of your return, <b>minus</b> the amounts on lines 11700 and 12500	1
Line 1 minus \$70,375 (if negative, enter "0")	2
Enter the amount from line 0 or 2, whichever is <b>less</b>	3
Multiply the amount on line 3 by 30%	4
Enter the amount from line 4 on lines 23500 and 42200 of your return. However, if you also received Old Age Security benefits and the amount on line 23400 of your return is more than \$79,845, complete the chart for line 23500 on the Federal Worksheet.	

**Tableau de remboursement**

Remplissez ce tableau si le taux de 30 % figure à la case 7 et que, selon votre déclaration, le total des lignes 21300 et 23400 plus le montant pour le remboursement des revenus d'un régime enregistré d'épargne-invalidité (REEI) inclus à la ligne 23200, moins le total des lignes 11700 et 12500, dépasse 70 375 \$.

Inscrivez le montant de la case 15 moins le montant de la case 30 (si négatif, inscrivez « 0 »)	0
Total des montants des lignes 21300 et 23400 <b>plus</b> le montant de REEI inclus à la ligne 23200 de votre déclaration, <b>moins</b> les montants des lignes 11700 et 12500	1
Ligne 1 moins 70 375 \$ (si négatif, inscrivez « 0 »)	2
Inscrivez le montant le <b>moins élevé</b> : ligne 0 ou ligne 2	3
Multipliez le montant de la ligne 3 par 30 %	4
Inscrivez le montant de la ligne 4 aux lignes 23500 et 42200 de votre déclaration. Toutefois, si vous avez aussi reçu des prestations de la Sécurité de la vieillesse et que le montant de la ligne 23400 de votre déclaration dépasse 79 845 \$, remplissez la feuille de travail fédérale pour la ligne 23500.	

[29] There is some support for the Commission’s argument from the Claimant’s file. For example, the 30% repayment rate appears on the Claimant’s T4E for the 2021 and 2022 tax years.<sup>10</sup> Yet, she only complains of having to repay benefits in 2022, and not in 2021.<sup>11</sup>

<sup>9</sup> This example is taken from page GD3-37 of the appeal record and appears to be for the 2021 taxation year.

<sup>10</sup> See pages GD3-36 and GD3-34 of the appeal record.

<sup>11</sup> Plus, no “Repayment of social benefits” appears on the Claimant’s recent statement from the CRA for the 2021 tax year: see page AD52-4, which provides general background information.

– **Part VII is administered by the Minister of National Revenue**

[30] I agree that the amount a person has to repay under Part VII of the *Employment Insurance Act* is beyond the Tribunal's powers.

[31] The Tribunal only has the power to review certain decisions made by the Commission.<sup>12</sup> But Part VII is administered and enforced by the **Minister of National Revenue**, not the Commission.<sup>13</sup>

[32] Plus, many of the Claimant's concerns seem to stem from the CRA's tax treatment of a payment that she received from WSIB in 2022.<sup>14</sup> The Claimant argues that these monies were paid to her "tax-free." And while the WSIB made clear that its payment was compensating the Claimant for lost earnings from 2019 to 2022, the CRA appears to have included the full payment as part of the Claimant's income in 2022. This likely impacted the Claimant's repayment obligation and might have affected other government benefits too.

[33] Again, however, the Tribunal has no power to decide whether the CRA's treatment of the Claimant's 2022 payment from WSIB was right or wrong.<sup>15</sup>

## **Conclusion**

[34] I recognize that this decision will contribute to the Claimant's intense frustration. And I understand the sense that she's getting the runaround from the various government departments and agencies that she's been dealing with. I regret that I wasn't able to help get answers to more of her questions.

[35] Nevertheless, I have to stay within the powers that the law gives me. This means that I can't base my decision on the quality of service that the Commission, Service

---

<sup>12</sup> See sections 112 to 113 of the *Employment Insurance Act*.

<sup>13</sup> See section 148 of the *Employment Insurance Act*.

<sup>14</sup> See pages GD3-46 and AD10-4 to 6 of the appeal record, which provide general background information.

<sup>15</sup> A tax accountant or lawyer might be able to provide the Claimant with more information on this issue.



Canada, or the CRA provide. Rather, I have no choice but to dismiss the Claimant's appeal.

Jude Samson  
Member, Appeal Division