



Citation: *VD v Canada Employment Insurance Commission*, 2024 SST 606

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

# **Extension of Time and Leave to Appeal Decision**

**Applicant:** V. D.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated  
October 5, 2023 (GE-23-2243)

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**Tribunal member:** Glenn Betteridge

**Decision date:** May 29, 2024

**File number:** AD-24-287

## Decision

[1] I am giving V. D. more time to file his appeal.

[2] But I am not giving him permission to appeal. This means his appeal won't go ahead and the General Division decision stands unchanged.

## Overview

[3] V. D. is the Claimant in this case. He made a claim for Employment Insurance (EI) regular benefits. The Canada Employment Insurance Commission (Commission) accepted his claim and paid him benefits.

[4] While he was receiving EI benefits, he started to receive a Canada Pension Plan (CPP) retirement pension. At that time, the Commission didn't allocate and deduct the amount of his CPP retirement pension from his EI benefits. This is what the law says the Commission must do.<sup>1</sup>

[5] Later on, the Commission decided the Claimant wasn't entitled to all the EI benefits he had received. So, it created an overpayment. This became a debt the Claimant owed to the Commission.

[6] The Claimant appealed the Commission's decision to this Tribunal's General Division. The General Division dismissed his appeal. He is now appealing the General Division decision to the Appeal Division.

## Issues

[7] I have to decide two issues:

- Did the Tribunal receive the Claimant's appeal form after the 30-day deadline for him to send it in? If so, should I give him more time to file his appeal?

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<sup>1</sup> Section 19 of the *Employment Insurance Act* says a person's earnings have to be deducted from the benefits they receive. Sections 35 and 36 of the *Employment Insurance Regulations* set out what counts as earnings and the rules for allocating earnings to weeks in a person's benefit period.

- Is there an arguable case the General Division make a legal error by not basing its decision on the information the Claimant says the Commission gave him?

## Analysis

### **The Claimant's appeal was late, but I have given him more time**

[8] An application for permission to appeal must be made to the Appeal Division within 30 days after the day the Tribunal communicates the General Division decision and reasons in writing.<sup>2</sup> When the Tribunal receives an appeal after the 30-day deadline, it is late.

[9] If an appellant appeals after the deadline, the Tribunal can give them more time to appeal. But the appellant needs to have a reasonable explanation for why they are late.<sup>3</sup> The Tribunal can't give more time if it received the appeal more than one year after the day the Tribunal communicated the General Division decision and reasons in writing.

[10] I find that the Claimant filed his appeal late. In other words, the Appeal Division received his appeal more than 30 days after he received the General Division decision.

[11] The Claimant (through his wife) explained that they called and asked the Tribunal to mail him the Appeal Division form on October 19, 2023.<sup>4</sup> This was on or about the day he received the General Division decision. They called back on October 27, 2023, and a Tribunal staff member helped them complete the appeal form. His wife says she mailed the form right away. Then, on March 28, 2024, she called the Tribunal to confirm it had received the form. The Tribunal hadn't received it, so it mailed them another copy of the appeal form. They completed it and mailed it back to the Tribunal. The Tribunal received that appeal form on April 15, 2024.<sup>5</sup>

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<sup>2</sup> Section 57(1)(a) of the *Department of Employment and Social Development Act* (DESD Act) sets out this legal test.

<sup>3</sup> See section 57(2) of the DESD Act and section 27(1) of the *Social Security Tribunal Rules of Procedure*.

<sup>4</sup> See the Telephone Conversation Log, dated May 22, 2024.

<sup>5</sup> See the received stamp on document AD1.

[12] I accept the Claimant's evidence. I have reviewed the Tribunal's records. There is no evidence that goes against what the Claimant (or his wife) told the Tribunal. And I have no other reason to doubt it.

[13] I find that the Tribunal received the Claimant's appeal more than 30 days, but less than one year, after he received the General Division decision. He received the decision on or about October 19, 2023. The Tribunal received his appeal on April 15, 2024. This means his appeal was late.

[14] I am giving the Claimant until April 15, 2024, the day the Tribunal received his appeal form, to file his appeal. He has given a reasonable explanation for why his appeal was late. The Claimant uses regular mail and the phone to communicate with the Tribunal. He had to get a paper copy of the appeal form, then file his appeal in writing. Doing this involved calling the Tribunal and sending mail back and forth with the Tribunal.

[15] It seems the first time he mailed his appeal form to the Tribunal it got lost—since the Tribunal didn't receive it. And the Claimant wasn't aware of this until his wife followed up with the Tribunal. This is a reasonable explanation for why his appeal was late.

### **I am not giving the Claimant permission to appeal**

#### **– The test for getting permission to appeal is easy to meet**

[16] I can give permission to appeal if the applicant can show that their appeal has a reasonable chance of success. This means the Claimant has to show that the General Division made **at least one** of the following errors:

- It used an unfair process or was biased.
- It made a legal error.
- It based its decision on an important factual error.

- It didn't decide an issue it should have decided, or it decided an issue it should not have decided.<sup>6</sup>

[17] The arguable case test is easy to meet.<sup>7</sup>

– **There isn't an arguable case that the General Division made a legal error**

[18] The General Division makes a legal error when it does one of the following:

- It misstates a legal test.
- It doesn't follow the correct legal test.
- It doesn't follow a court decision it has to follow.
- It doesn't give adequate reasons for its decision.

[19] On his appeal form, the Claimant checked the "error of law" box. But he didn't point to a specific error in the General Division's decision, or in the process it used to arrive at that decision. He explains that he was told by Service Canada that he didn't have to declare his CPP retirement pension after the first payment. So, he didn't. He argues he did what he was told to do.

[20] I reviewed the General Division decision. At paragraph 12, the General Division identified the Claimant's argument about telling Service Canada "many times" about his CPP retirement pension. Then, at paragraphs 19 to 25, it decided the Claimant had to repay the overpayment, explained why, and correctly stated that it had no power to write off or reduce the overpayment. Finally, at paragraph 26, the General Division correctly stated it had no power to change the law, citing an important court decision that makes this point.

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<sup>6</sup> These are the grounds of appeal in section 58(1) of the DESD Act. Section 58(2) of the DESD Act says that I have to give permission to appeal if the appeal has a reasonable chance of success. This is the same as having an "arguable case." See *O'Rourke v Canada (Attorney General)*, 2018 FC 498.

<sup>7</sup> This legal test is described in cases like *Osaj v Canada (Attorney General)*, 2016 FC 115 at paragraph 12; and *Ingram v Canada (Attorney General)*, 2017 FC 259 at paragraph 16.

[21] The General Division didn't base its decision on what Service Canada told the Claimant. And it didn't have to.

[22] A claimant can't win their appeal based on misinformation from the Commission or its representative (for example, Service Canada) when that information goes against what the law says.<sup>8</sup> In other words, what the Commission told the Claimant made no legal difference in his appeal to the General Division. The *Employment Insurance Act* says that when a person receives benefits they aren't entitled to, those benefits are an overpayment. And the person has a legal duty to pay it back.

[23] So, the General Division didn't base its decision on a legal error when it decided the Claimant owes an overpayment and has to pay it back.

– **There is no other reason to give the Claimant permission to appeal**

[24] The Claimant is representing himself. So, I went beyond what he wrote on his appeal form. I reviewed the appeal file from the General Division and read the General Division decision to see whether the General Division made errors he might not be aware of.<sup>9</sup>

[25] I didn't find that the General Division ignored or misunderstood any important evidence. It didn't decide any legal issues it had no power to decide. It identified and decided the legal issues it had to decide. And it used the correct legal tests when making its decision.

[26] This means there is no arguable case that the General Division made any other error I can consider. I appreciate that he disagrees with the General Division decision

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<sup>8</sup> The Federal Court of Appeal has said this in its decisions in cases such as *Puig v Canada (Attorney General)*, 2024 FCA 48; *Canada (Attorney General) v Buors*, 2002 FCA 372; and *Granger v Canada Employment and Immigration Commission*, [1986] 3 FC 70.

<sup>9</sup> When a self-represented claimant is asking for permission to appeal a General Division decision, I should not apply the permission to appeal legal test in a mechanistic manner. I take this to mean I should review the law, the evidence, and the decision from the General Division. See, for example, *Griffin v Canada (Attorney General)*, 2016 FC 874; *Karadeolian v Canada (Attorney General)*, 2016 FC 615; and *Joseph v Canada (Attorney General)*, 2017 FC 391.

and believes it is unfair that he has to pay back the benefits he received. Unfortunately, these are grounds of appeal the law lets me consider.

## Conclusion

[27] I am giving the Claimant more time to file his appeal.

[28] But I can't give him permission to appeal because he hasn't shown that his appeal has a reasonable chance of success. This means his appeal won't go ahead. And the General Division decision stands unchanged.

[29] The law doesn't give the Tribunal the power to write off all or part of the overpayment, or to decide terms for repaying the debt. The Commission and the Canada Revenue Agency (CRA) have those powers. The Claimant can call the **Debt Management Call Centre at CRA at 1-866-864-5823** about write-offs and other types of debt relief, or to negotiate a repayment plan. If he wants the Commission to write off his debt, he should ask how to apply for a write-off.

Glenn Betteridge  
Member, Appeal Division