



Citation: *SN v Canada Employment Insurance Commission*, 2024 SST 728

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

# **Leave to Appeal Decision**

**Applicant:** S. N.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated May 13, 2024  
(GE-24-1137)

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**Tribunal member:** Stephen Bergen

**Decision date:** **June 25, 2024**

**File number:** AD-24-385

## **Decision**

[1] I am refusing leave (permission) to appeal. The appeal will not proceed.

## **Overview**

[2] S. N. is the Applicant. I will call him the Claimant because this application is about his claim for Employment Insurance (EI) benefits.

[3] When the Claimant lost his job in September 2021, he applied for EI benefits right away and the Commission began to pay him regular EI benefits. However, the Claimant quickly found a full-time job.

[4] The Respondent, the Canada Employment Insurance Commission (Commission), later learned that he was working and had earnings, during twenty-four of the weeks in which he was collecting benefits. It asked him to repay the benefits he received over those twenty-four weeks.

[5] The Claimant asked for a reconsideration. He said that he had only received three weeks of benefits in total, and that he stopped filing his claim reports when he found work.

[6] The Commission would not change his decision, so the Claimant appealed to the General Division of the Social Security Tribunal. The General Division dismissed his appeal. He is now asking for permission to appeal to the Appeal Division.

[7] I am refusing permission to appeal. The Claimant has not made out an arguable case that the General Division made any of the kinds of error that I may consider.

## **Issues**

- a) Is there an arguable case that the General Division made an error of procedural fairness?

- b) Is there an arguable case that the General Division made an important error of fact?
- c) Is there an arguable case that the General Division made an error of law?

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

[8] In his application to the Appeal Division, the Claimant selected all of the errors identified above, but his explanation for why he is appealing does not address any of the errors.

[9] The Claimant says he is appealing the General Division because he cannot afford to repay the amount the Commission says he owes, and he says it is unfair he should have to repay the Commission when it has not tried to recover money from others.

### **Fairness**

[10] There is no arguable case that the General Division acted unfairly.

#### **– What does procedural fairness mean?**

[11] Procedural fairness is concerned with the fairness of the process. It is **not** concerned with whether a party feels that the decision result is fair.

[12] Parties before the General Division have a right to certain procedural protections such as the right to be heard and to know the case against them, and the right to an unbiased decision-maker.

#### **– There is no arguable case that the General Division acted in a way that was procedurally unfair**

[13] The Claimant has not said that he did not have a fair chance to prepare for the hearing or that he did not know what was going on in the hearing. He has not said that the hearing did not give him a fair chance to present his case or to respond to the Commission's case. He has not complained that the General Division member was biased or that the member had already prejudged the matter.

[14] When I read the decision and review the appeal record, I do not see that the General Division did anything, or failed to do anything, that causes me to question the fairness of the process.

### **Error of law**

[15] There is no arguable case that the General Division made an error of law. The Claimant has not pointed to any error of law, and none is apparent on the face of the record.

[16] The General Division discussed how the law requires the allocation of earnings, and requires the deduction of earnings from benefits. The Claimant did not dispute the Commission's authority to allocate his income and reduce his benefits.

[17] The Claimant was more concerned with how the Commission had reconsidered the benefits it paid him, so long after they were paid. However, the General Division was correct that the Commission may reconsider for any reason within three years of the date of the original decision, so long as it acts judicially.<sup>1</sup>

[18] The General Division considered the correct factors when it determined whether the Commission had acted judicially in reconsidering the benefits that it had paid the Claimant.<sup>2</sup> It specifically addressed the Claimant's argument that the Commission had discriminated against him.

[19] Finally, the General Division was correct that it had no authority to write-off or forgive any portion of a Claimant's debt to the Commission. In some circumstances, the Commission may write off a debt. But this is the Commission's decision. Once it refuses to write-off a debt, it is not permitted to reconsider its decision.<sup>3</sup> Since it cannot reconsider its decision, its refusal cannot be appealed to the General Division. The

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<sup>1</sup> See section 52 of the *Employment Insurance Act* (EI Act).

<sup>2</sup> See para 36–40 of the General Division decision.

<sup>3</sup> See section 112.1 of the *Employment Insurance Act*.

General Division has jurisdiction to consider only the issues arising from the Commission's reconsideration decision that is on appeal.<sup>4</sup>

### **Error of fact**

[20] There is no arguable case that the General Division made an error of fact.

[21] For the purpose of this appeal, an important error of fact is where the General Division bases its decision on a finding of fact that overlooks or misunderstands relevant evidence, or where its finding does not rationally follow from the evidence.<sup>5</sup>

[22] The General Division found that the Claimant was earning income from his job for the weeks of October 3, 2021, to March 13, 2022. The Claimant did not dispute this.

[23] The General Division also found that the Claimant received twenty-seven weeks of benefits, but was only entitled to three weeks. It relied on

- the Commission's overpayment breakdown (showing twenty-four weeks in which he had reported zero earnings but actually had earnings of approximately \$1000 per week);
- the Claimant's inability to produce banking deposit information to suggest otherwise, and;
- the Claimant's own admission that he could not be sure that he had not received the benefits.

The Claimant has not pointed to any evidence that the General Division ignored or misunderstood to reach this finding.

[24] When the General Division's decided that the Commission exercised its discretion judicially, it considered

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<sup>4</sup> See section 113 of the EI Act.

<sup>5</sup> Section 58(1)(c) of the EI Act describes the error more precisely. It says that it is where, "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."

- the Claimant's assertions of discrimination, and;
- the fact that the Commission paid the benefits based on the Claimant's false and misleading statements about his job and income.

The Claimant did not identify other evidence that would have been relevant to the Commission's decision that the Commission acted judicially.

[25] I searched the record for evidence that could have been relevant but which the General Division may have ignored or misunderstood.<sup>6</sup> Unfortunately for the Claimant, the record does not support an argument that the General Division may have made an important error in how it found that he received the 27 weeks of benefits, or how it found that the Commission exercised its discretion to reconsider judicially.

[26] I appreciate that the Claimant has said that he is not sure that he actually received all the benefits that he is being asked to repay. However, the General Division is the primary trier of fact. It is not the role of the Appeal Division to reweigh or re-evaluate the evidence.<sup>7</sup> I cannot find that the General Division made an error of fact unless it ignored or misunderstood the evidence that was before it, or reached findings that cannot be supported by the evidence it considered.

[27] The Claimant's appeal has no reasonable chance of success.

## Conclusion

[28] I am refusing permission to appeal. This means that the appeal will not proceed.

Stephen Bergen  
Member, Appeal Division

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<sup>6</sup> I am following the lead of the Federal Court in decision such as *Karadeolian v. Canada (Attorney General)*, 2016 FC 615.

<sup>7</sup> See for example: *Tracey v Canada (Attorney General)*, 2015 FC 1300; *Hideq v Canada (Attorney General)*, 2017 FC 439.