



Citation: *SN v Canada Employment Insurance Commission*, 2024 SST 730

**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-24-1139)

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**Tribunal member:** Stephen Bergen

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

**File number:** AD-24-386

## 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] The Claimant applied for EI benefits on April 25, 2022, but he started working on May 16, 2022. He did not report that he was working or receiving earnings but continued to receive benefits.

[4] When the Respondent, the Canada Employment Insurance Commission (Commission), discovered that he was working and had earnings, it demanded that he repay those benefits he had been paid. It also assessed a penalty of \$4977.00 and issued a “very serious” violation.

[5] The Claimant asked for a reconsideration. He said that he was struggling financially and that he accepted the EI benefits because he was on probation with his job and didn't know if it would last. The Commission reduced the amount of the penalty by 20% because of his car accident and financial difficulties, and it rescinded the notice of violation because it would be an undue hardship. It did not otherwise change its decision.

[6] The Claimant appealed to the General Division of the Social Security Tribunal, but 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. He has not said in what way the General Division process was unfair. He has not identified any facts that the General Division got wrong. He has not shown how the General Division made an error of law.

[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 that the Commission had reconsidered the benefits it paid him, so long after they were paid. However, the General Division was also 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.

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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.

[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 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 Claimant has not pointed to any fact that the General Division got wrong that is also relevant to whether the Commission had discriminated against him or otherwise failed to exercise its discretion in a judicial manner when it reconsidered his benefits. He has not identified any mistake of fact relevant to whether his debt could be forgiven or reduced.

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

### **Conclusion**

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

Stephen Bergen  
Member, Appeal Division

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

<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."