



Citation: *RG v Canada Employment Insurance Commission*, 2024 SST 1234

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: R. G.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated
September 11, 2024 (GE-24-2017)

Tribunal member: Glenn Betteridge

Decision date: October 13, 2024

File number: AD-24-650

Decision

[1] I am not giving R. G. permission to appeal.

[2] This means his appeal won't go forward, and the General Division decision stands unchanged.

Overview

[3] R. G. is the Claimant. He made a claim for Employment Insurance (EI) benefits. The Canada Employment Insurance Commission (Commission) paid him benefits.

[4] Later, the Commission investigated his claim. It found he didn't report that he worked and earned money when he was getting benefits (from November 2020 to October 2021). The Commission allocated his earnings. In other words, it deducted part of his earnings for each week from the weekly EI benefit it had paid him. This meant he had a \$23,928 overpayment. The Commission recovered some money, then sent him a notice of debt. The Commission included a \$5,000 penalty in his debt because the Claimant made 26 false or misleading reports.

[5] The Claimant asked the Commission to reconsider its decisions. Because of his financial situation, the Commission reduced the amount of the penalty to \$2,500. It upheld the allocation and overpayment, and its decision to impose a penalty.

[6] The Claimant appealed to this Tribunal's General Division. The General Division dismissed his appeal. It decided the Commission acted judicially when it imposed the penalty. It decided the Commission correctly allocated his earnings. So, the overpayment amount was correct.

[7] The Claimant has asked for permission to appeal the General Division decision. To get permission, the Claimant has to show his appeal has a reasonable chance of success. Unfortunately for the Claimant, he hasn't.

Issues

[8] I have to decide two issues.

- Is there an arguable case the General Division process or hearing was unfair to the Claimant?
- Is there an arguable case the General Division made an important factual error?

I am not giving the Claimant permission to appeal

[9] I read the Claimant's application to the Appeal Division and the General Division decision.¹ I reviewed the documents in the General Division file.² And I listened to the hearing recording, because the Claimant says the General Division was discriminatory and inhumane towards him.³

[10] I am not giving the Claimant permission to appeal, for the reasons that follow.

The test for getting permission to appeal

[11] To get permission, the Claimant's appeal has to have a reasonable chance of success.⁴ This means he has to show there is an arguable case the General Division made an error the law lets me consider.⁵

- The General Division used an unfair process, prejudged the case, or was biased. (This is a procedural fairness or natural justice error.)

¹ The Claimant's application to the Appeal Division is AD1.

² See GD2, GD3, GD4, GD10, GD11, and GD12.

³ See AD1-3.

⁴ Section 58(2) of the *Department of Employment and Social Development Act* (DESD Act) says that I have to give permission to appeal if the appeal has a reasonable chance of success. This means the same as having an "arguable case." See *O'Rourke v Canada (Attorney General)*, 2018 FC 498; *Osaj v Canada (Attorney General)*, 2016 FC 115 at paragraph 12; and *Ingram v Canada (Attorney General)*, 2017 FC 259 at paragraph 16.

⁵ These are the grounds of appeal in section 58(1) of the DESD Act. I refer to these grounds as errors.

- The General Division didn't decide an issue it should have decided, or decided an issue it should not have decided. (This is a jurisdictional error.)
- The General Division made a legal error.
- The General Division based its decision on an important factual error.

The Claimant's reasons for appealing

[12] The Claimant says he "completely disagrees" with the General Division decision.⁶ Simply disagreeing with the General Division's findings, or the outcome of the appeal, isn't a valid ground of appeal.⁷

[13] The Claimant argues the General Division's decision is discriminatory. (At the General Division he argued the Commission's decision was discriminatory.) This isn't a valid ground of appeal. It doesn't count as a legal or jurisdictional error. The General Division didn't have the legal power to decide a discrimination complaint against the Commission. And I can't consider his complaint the General Division's decision discriminates against him. (In the next section, I consider whether the General Division treated the Claimant in a discriminatory way during the appeal process.)

[14] The Claimant argues Canada has been in disarray since 2015. Torontonians are now experiencing poor living conditions. And he is uncertain about whether fairness and justice are still present in Canada.

[15] The law that I have to apply doesn't count these as reviewable errors—even if what the Claimant says is true. I can't base my decision on financial hardship or general fairness.⁸

[16] The Claimant checked all four error boxes on his application form. But from his explanation, I understand he is arguing the General Division made two types of errors—

⁶ See AD1-3.

⁷ See *Griffin v Canada (Attorney General)*, 2016 FC 874 at paragraph 20.

⁸ See *Twardowski v Canada (Attorney General)*, 2024 FC 1326 at paragraph 31.

it didn't use a fair process, and it made an important factual error. I will consider these errors, one after the other.

There isn't an arguable case the General Division process was unfair, or the Member was biased or prejudged the case

[17] The Claimant wrote:

Discrimination and Inhumane: The General Division is exploiting my severe depression. When I have a serious mental issue, they require me to have additional documents. I cannot respond to their request immediately because of mental issue. It is my belief that I have been victimized by the General Division.⁹

– No arguable case the General Division process was unfair

[18] Nothing in the General Division process or hearing suggests that there is an arguable case the General Division treated the Claimant unfairly.

[19] The General Division makes an error if it uses an unfair process.¹⁰ These are called procedural fairness or natural justice errors. The question is whether a person knew the case they had to meet, had an opportunity to respond to that case, and had an impartial decision-maker consider their case fully and fairly.¹¹

[20] The Claimant filed his appeal to the General Division seven days after he got the Commission's reconsideration decision. This shows me he knew how to appeal, and he did it quickly—long before the deadline.

[21] The Tribunal has a policy about accommodation and accessibility. It is available on the Tribunal's website.¹² The General Division appeal form asked the Claimant to tell

⁹ See AD1-3.

¹⁰ This is a ground of appeal under section 58(1)(a) of the DESD Act.

¹¹ See *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69; and *Kuk v Canada (Attorney General)*, 2024 FCA 74.

¹² See the policy at www.sst-tss.gc.ca/en/decisions-laws-rules-and-policies/accessibility-and-accommodation-policy.

the Tribunal if he needed alternate arrangements and has a link to the accommodation and accessibility policy.¹³

[22] The Claimant didn't ask for an accommodation before or at the General Division hearing. So, the General Division didn't know the Claimant might need an accommodation.

[23] The Tribunal didn't ask the Claimant for documents "immediately." The Claimant had almost three months to send the Tribunal evidence and arguments. This was the period between when he filed his appeal and the hearing. The Tribunal sent the Claimant the Commission's documents over two months before the hearing.

[24] The Claimant understood the General Division process well enough to ask for two adjournment requests. The General Division granted the Claimant's adjournment requests.¹⁴ And the Tribunal used a professional interpreter for the hearing.¹⁵

[25] He sent documents the day of the hearing. The General Division accepted those documents. The General Division actively adjudicated the hearing in a professional and respectful way, throughout. The General Division member explained the law, reviewed the Commission's arguments, and gave the Claimant a full and fair opportunity to make his case.

[26] The General Division Member focused her questions on the "knowingly make false statements" issue. That was appropriate because of the legal issue, his evidence, and arguments. The Member asked him questions in a measured and respectful way. The hearing lasted a little over 1 hour and 15 minutes. Several times the Member asked the Claimant if he had anything else to add. Finally, the General Division gave the Claimant an opportunity to respond to post-hearing documents (copies of his biweekly

¹³ See AD1-4

¹⁴ See the General Division decision at paragraphs 11 to 13.

¹⁵ See the General Division decision at paragraphs 14 and 15.

reports) the Commission sent.¹⁶ These reports were a key piece of evidence, and something the Claimant testified about.

[27] So, the record suggests the General Division gave the Claimant a full and fair opportunity to know and meet the Commission's case—before, during, and after the hearing. So, the Claimant hasn't shown an arguable case the General Division denied him a full and fair opportunity to know and respond to the Commission's case.

– **No arguable case the Member was biased or prejudged the appeal**

[28] I didn't find an arguable case a reasonably informed person would think the General Division would not decide the Claimant's case fairly.

[29] The legal test to show a tribunal member was biased or prejudged the case is difficult to meet.¹⁷ A tribunal member is presumed to be impartial. The person who alleges bias has to show that a reasonably informed person would think, in the circumstances, the decision-maker would not decide fairly.¹⁸

[30] The Claimant didn't raise any concerns about fairness during the hearing. I listened to the hearing and read the General Division decision. Nothing I heard or read suggests the Member prejudged the case or was biased. And nothing suggests the Member might have discriminated against or treated the Claimant in an inhumane way—based on his depression or any other prohibited ground of discrimination.

[31] To summarize this section, the Claimant hasn't shown an arguable case the General Division used an unfair process. And he hasn't shown an arguable case the Member was biased or discriminated against him or prejudged his case.

¹⁶ See GD10, GD11, and GD12. And see paragraphs 21 to 23 of the General Division decision.

¹⁷ See *Canadian Pacific Railway Company v. Canada (Attorney General)*, 2018 FCA 69; and *Kuk v Canada (Attorney General)*, 2024 FCA 74.

¹⁸ This is a plain language statement of the legal test the Supreme Court of Canada set out in *Committee for Justice and Liberty v National Energy Board*, [1978] 1 SCR 369 at page 394. The Court said the test is, "what would an informed person, viewing the matter realistically and practically—and having thought the matter through—conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly."

There isn't an arguable case the General Division made an important factual error

[32] The Claimant argues: "Slander or Defamation: All the evidence I had provided was not considered by the General Division."¹⁹ The Claimant didn't specify what evidence the General Division ignored or misunderstood. Before and at the hearing he gave evidence about the misrepresentation issue. He also gave evidence to support his argument he should not have to pay back the overpayment.

[33] The General Division makes an important factual error if it bases its decision on a factual finding it made by ignoring or misunderstanding relevant evidence.²⁰ I can presume the General Division reviewed all the evidence—it doesn't have to refer to every piece of evidence.²¹

[34] I reviewed the evidence before the General Division—the documents and the Claimant's testimony. And I read the General Division's decision. I didn't see an arguable case the General Division ignored or misunderstood any evidence that was relevant to the legal issues it had to decide.

[35] The General Division set out the law it had to apply to decide whether the knowingly made false statements (paragraphs 50 and 51). The legal test told the General Division what evidence was relevant.

[36] The Claimant said he was under high mental stress at the time he filled out his biweekly reports. That made him think he didn't have any income from his job.²² The General Division asked questions about what the Claimant knew at that time, his experience getting EI, and his understanding of English. It asked him about his ability to

¹⁹ See AD1-3.

²⁰ Section 58(1)(c) of the DESD Act says it is a ground of appeal where the General Division based its decision on an erroneous finding of fact it made in a perverse or capricious manner or without regard for the material before it. I have described this ground of appeal using plain language, based on the words in the DESD Act and the cases that have interpreted them.

²¹ See *Sibbald v Canada (Attorney General)*, 2022 FCA 157 at paragraph 46.

²² See GD3-

function at that time, including doing things like working, filing his income taxes, and paying his rent.

[37] The General Division didn't ignore the Claimant's evidence about his mental stress (paragraph 33). The General Division summarized then weighed the most relevant evidence. This was the evidence about what he knew—about working and getting paid—at the time he completed and filed his reports (paragraphs 52 to 64). Then it made a finding of fact.

[38] The Claimant knowingly made 26 misrepresentations when he completed his biweekly reports (paragraphs 55 and 56). So, the General Division considered the specific evidence it had to consider. This evidence was more important than the Claimant's level of stress or general state of mind at that time. And it's up to the General Division to weigh the evidence, not me.

[39] The Claimant sent in news stories about the government's administration of COVID benefits and other programs. These weren't relevant to his appeal.²³ The same goes for his evidence and opinions about the deterioration of Canada society.

[40] To summarize, the Claimant hasn't shown an arguable case the General Division made an important factual error.

Conclusion

[41] The Claimant hasn't shown his appeal has a reasonable chance of success. This means his appeal can't go forward.

Glenn Betteridge
Member, Appeal Division

²³ See GD2-11 to GD2-17, and GD9.