



Citation: *SF v Canada Employment Insurance Commission*, 2025 SST 29

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: S. F.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated December 13, 2024
(GE-24-2893)

Tribunal member: Solange Losier

Decision date: January 14, 2025

File number: AD-25-25

Decision

[1] Leave (permission) to appeal is refused. The appeal will not proceed.

Overview

[2] S. F. is the Claimant in this case. He applied for and got 40 weeks of Employment Insurance extended parental benefits (benefits).

[3] The Canada Employment Insurance Commission (Commission) retroactively decided that he wasn't entitled to get benefits from February 13, 2023.¹ This resulted in an overpayment of benefits.²

[4] The General Division concluded the same.³ It found that the Commission had acted in a judicial manner when it reconsidered his parental benefit claim. It concluded that he got 40 weeks of benefits, but was only entitled to get 32 weeks. As a result, it said the overpayment remained payable.

[5] The Claimant is now asking for permission to appeal. He argues that the General Division made an error of law.⁴ I am denying his request for permission to appeal because it has no reasonable chance of success.⁵

Issues

[6] Is there an arguable case that the General Division made an error of law when it concluded that the Commission had acted judicially in reconsidering his claim or when it found he was only entitled to get 32 weeks of extended parental benefits?

¹ See Commission's initial and reconsideration decision at pages GD3-28 and GD3-38.

² See notice of debt at pages GD3-30 to GD3-31.

³ See General Division decision at pages ADN1A-1 to ADN1A-12.

⁴ See Application to the Appeal Division at pages ADN1-1 to ADN1-7.

⁵ Section 58(2) of the Department of Employment and Social Development Act (DESD Act) says leave to appeal is refused if I am satisfied that the appeal has no reasonable chance of success.

Analysis

[7] An appeal can proceed only if the Appeal Division gives permission to appeal.⁶ I must be satisfied that the appeal has a reasonable chance of success. This means that there must be some arguable ground that the appeal might succeed.⁷

[8] I can only consider certain types of errors. I have to focus on whether the General Division could have made one or more of the relevant errors (also known as “grounds of appeal”).

[9] The possible grounds of appeal to the Appeal Division are that the General Division:⁸

- proceeded in a way that was unfair
- acted beyond its powers or refused to exercise those powers
- made an error of law
- based its decision on an important error of fact.

[10] The Claimant is arguing that the General Division made an error of law, so that’s what my decision will focus on.⁹

I am not giving the Claimant permission to appeal

[11] The Claimant argues that the General Division made an error of law. He would like to obtain information via a Freedom of Information (FOI) request to see whether the Commission acted judiciously when they reconsidered his claim for parental benefits.¹⁰

⁶ See section 56(1) of the DESD Act.

⁷ See *Osaj v Canada (Attorney General)*, 2016 FC 115.

⁸ See section 58(1) of the DESD Act.

⁹ See section 58(1)(b) of the DESD Act.

¹⁰ See page ADN01-3.

– **There is no arguable case that the General Division made an error of law**

[12] An error of law can happen when the General Division doesn't apply the correct law or when it uses the correct law but misunderstands what it means or how to apply it.¹¹

[13] The General Division had to decide two things. First, it had to decide whether the Commission had exercised its discretion in a judicial manner when it reconsidered the claim for parental benefits. Second, the General Division also had to decide whether the Claimant was entitled to get the 40 weeks of parental benefits he had already received.

[14] The law allows the Commission to reconsider a claim for benefits even after benefits have been paid to a person.¹² The Commission has the power to do this within 36 months after benefits have been paid, and in some circumstances it can revisit a claim up to 72 months.¹³ And if a person got benefits they weren't entitled to receive, the law says that amount is repayable.¹⁴

[15] The General Division set out the correct legal test from the Federal Court of Appeal (Court) in the *Purcell* decision.¹⁵ It concluded that the Commission hadn't acted in bad faith, or for an improper purpose, didn't discriminate, or consider irrelevant factors or fail to consider relevant factors.¹⁶ And it found that the claim was reconsidered by the Commission within the 36-month period.¹⁷

[16] The General Division considered the Claimant's argument that he was provided with misinformation from the Commission.¹⁸ However, it explained that the Court has already considered this issue in the *Molchan* decision.¹⁹ It rejected the Claimant's

¹¹ See section 58(1)(b) of the DESD Act.

¹² See section 52 of the *Employment Insurance Act* (EI Act).

¹³ See section 52(5) of the EI Act.

¹⁴ See sections 43 and 52(3) of the EI Act.

¹⁵ See paragraph 18 of the General Division decision and *Canada (Attorney General) v Purcell*, 1995 CanLII 3558 (FCA).

¹⁶ See paragraphs 22–30 of the General Division decision.

¹⁷ See paragraph 21 of the General Division decision.

¹⁸ See paragraphs 25–26 of the General Division decision.

¹⁹ See paragraph 27 of the General Division decision and *Molchan v Canada (Attorney General)*, 2024 FCA 46.

argument noting that a person can't rely on misinformation from the Commission to be relieved of an overpayment and avoid reconsidering the claim.²⁰

[17] The General Division has to follow binding case law. It correctly stated and relied on the *Purcell* and *Molchan* decisions when it was assessing the Commission's discretion and reconsideration of the claim.

[18] The law also says that when parents share extended parental benefits that the "combined maximum total" is 69 weeks.²¹ The first parent who elects a benefit type (in this case, extended) binds the other parent to the same option.²² As well, an election for extended parental benefits is irrevocable once you receive benefits.²³ This has been upheld in several Court decisions.²⁴

[19] In this case, the General Division found that the Claimant had elected for extended parental benefits and got 40 weeks.²⁵ There was no dispute that his wife had previously elected for extended benefits and already got 37 weeks of benefits.²⁶ Because of that, it found that the Claimant got eight additional weeks of benefits that he wasn't entitled to get and was liable to repay.²⁷

[20] The General Division correctly stated that the combined maximum total is 69 weeks of extended parental benefits. Neither the General Division nor Appeal Division has any discretion in law to allow the Claimant to keep the additional eight weeks of benefits he got, even if he was misinformed by the Commission.

[21] The Claimant's argument that the General Division made an error of law has no reasonable chance of success for the following reasons.

²⁰ See *Molchan*, at paragraphs 8 and 37.

²¹ See section 23(4) of the EI Act.

²² See section 23(1.3) of the EI Act.

²³ See sections 23(1.1) and 23(1.2) of the EI Act.

²⁴ See *Johnson v Canada (Attorney General)*, 2023 FCA 49; *Canada (Attorney General) v Hull*, 2022 FCA 82 and *Canada (Attorney General) v Pettinger*, 2023 FCA 51.

²⁵ See paragraphs 2, 11, 33 of the General Division decision.

²⁶ See paragraph 11 of the General Division decision.

²⁷ See paragraphs 29 and 36 of the General Division decision.

[22] First, I acknowledge that the Claimant wants to obtain information via a FOI request to support his case, but an appeal to the Appeal Division isn't a "redo" based on updated evidence of the hearings before the General Division.²⁸ Instead, they are reviews of the General Division based on the same evidence.

[23] I would add that even if the Claimant had additional time to obtain a FOI request, the Appeal Division can't accept new evidence, except for limited circumstances.²⁹

[24] Second, the Claimant might disagree with the outcome of the General Division's decision, but that isn't a reviewable error.³⁰ The Appeal Division has a limited role, so I cannot intervene to reweigh the evidence or to settle a disagreement about the application of settled legal principles to the facts of a case.³¹

[25] Third, the General Division correctly stated and applied the law and relevant case law in its decision.³² As a result, there is no arguable case that the General Division made an error of law.³³

[26] The Claimant can still ask the Commission for a write-off of the overpayment debt due to hardship. The General Division outlined the steps involved in its decision.³⁴

– There are no other reasons for giving the Claimant permission to appeal

[27] I reviewed the file and examined the General Division decision. I didn't find any relevant evidence that the General Division might have ignored or misinterpreted.³⁵

²⁸ See *Gittens v Canada (Attorney General)*, 2019 FCA 256, at paragraph 13.

²⁹ See *Sibbald v Canada (Attorney General)*, 2022 FCA 157, at paragraphs 37 and 39.

³⁰ See section 58(1) of the DESD Act.

³¹ See *Garvey v Canada (Attorney General)*, 2018 FCA 118.

³² See paragraphs 9–10, 17–20, 22–23, 27, 29, 31, 41–42 of the General Division decision.

³³ See section 58(1)(b) of the DESD Act.

³⁴ See paragraph 43 of the General Division decision.

³⁵ The Federal Court has recommended such a review in *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

Conclusion

[28] Permission to appeal is refused. This means that the Claimant's appeal will not proceed. It has no reasonable chance of success.

Solange Losier
Member, Appeal Division