



Citation: *JK v Canada Employment Insurance Commission*, 2025 SST 31

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

# **Leave to Appeal Decision**

**Applicant:** J. K.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated October 22, 2024  
(GE-24-3202)

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**Tribunal member:** Elizabeth Usprich

**Decision date:** January 15, 2025

**File number:** AD-24-719

## Decision

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

## Overview

[2] The Applicant was laid off from his job. He received vacation pay of \$464.00 from his employer.

[3] The Canada Employment Insurance Commission (Commission) decided the money the Applicant received was earnings and had to be allocated. The Applicant asked the Commission to change its position, but it didn't.

[4] The Applicant appealed to the Social Security Tribunal (Tribunal) General Division. The General Division agreed with the Commission. The Applicant has now asked for permission to appeal the General Division's decision.

[5] I am denying the Applicant's request for permission to appeal because there is no reasonable chance of success.

## Preliminary matter

[6] The Applicant wrote a letter to the Social Security Tribunal (Tribunal) Appeal Division. Based on that letter, an appeal file was opened. It wasn't clear from the Applicant's letter what he felt the error was in the General Division's decision.

[7] So, I wrote the Applicant and asked for additional information.<sup>1</sup> The Tribunal also tried to contact the Applicant. The Applicant provided an email on December 20, 2024.<sup>2</sup> I have considered that in this decision.

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<sup>1</sup> I wrote to the Applicant on November 1, 2024, and on December 11, 2024.

<sup>2</sup> This was coded as AD3.

## Issue

[8] Is there an arguable case that the General Division made any reviewable error when it decided the Applicant's vacation pay was earnings and had to be allocated?

## I am not giving the Applicant permission to appeal

[9] An appeal can only go ahead if the Appeal Division gives an applicant permission to appeal.<sup>3</sup> I have to be satisfied that the appeal has a reasonable chance of success.<sup>4</sup> There has to be an arguable ground upon which the appeal might succeed.<sup>5</sup>

[10] There are only certain grounds of appeal that the Appeal Division can consider.<sup>6</sup> Briefly, the Applicant has to show the General Division did one of the following:

- It acted unfairly in some way.
- It decided an issue it shouldn't have, or didn't decide an issue it should have. This is also called an error of jurisdiction.
- It made an error of law.
- It based its decision on an important error of fact.

[11] So, for the Applicant's appeal to go ahead, I have to find there is a reasonable chance of success on any of those grounds. The Applicant says the law should be changed. He says administrators have made a mistake with this ruling. Vacation pay shouldn't be considered earnings and shouldn't be allocated.<sup>7</sup>

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<sup>3</sup> See section 56(1) of the Department of *Employment and Social Development Act* (DESD Act).

<sup>4</sup> See section 58(2) of the DESD Act.

<sup>5</sup> See *Hazaparu v Canada (Attorney General)*, 2024 FC 928 at paragraph 13; *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.

<sup>6</sup> See section 58(1) of the DESD Act. The grounds listed are also known as errors.

<sup>7</sup> See AD3-1 the Applicant's submission about his explanation for why he was appealing.

[12] Because the Applicant is self-represented, I took my own look at the appeal. I have reviewed the file and looked at the decision the Applicant is appealing.<sup>8</sup>

**There is no arguable case the General Division made a reviewable error**

[13] Upon separation, vacation pay received by an employee is considered earnings.<sup>9</sup> The Applicant has never disputed he received vacation pay from his employer.<sup>10</sup> It was the Applicant's requirement to prove to the General Division that the money he received from his employer wasn't earnings.<sup>11</sup> He didn't.

[14] The General Division decided the money the Applicant received was earnings. It also decided that because the vacation pay was earnings it had to be allocated.<sup>12</sup> The law is clear and well established. The Applicant was paid vacation pay because of his employment. It was paid to him when he was laid off. This is considered earnings and has to be allocated.<sup>13</sup>

[15] The Applicant feels the law should be changed. He feels the allocation of the money is a bad decision and immoral. He feels this is an opportunity for administrators to see their mistake and have the decision rolled back. Unfortunately, this isn't the role of the Tribunal. The Federal Court of Appeal has been clear on this issue and that means the law is binding on the Tribunal.

[16] I don't have any authority to do what the Applicant is asking. The Appeal Division's role is to look at what the General Division did and decide if there is a reviewable error. In this case there is no reviewable error.

[17] The facts haven't been disputed. The General Division decided what it had to decide. The law was correctly identified and applied. Finally, there is no suggestion that

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<sup>8</sup> There was no General Division hearing recording because the Applicant didn't attend.

<sup>9</sup> See section 35 of the *Employment Insurance Regulations*.

<sup>10</sup> See, for example, GD3-22, GD3-32, GD2-5, AD1-2, and AD3-1.

<sup>11</sup> See the General Division decision at paragraphs 14 and 15.

<sup>12</sup> See section 36(9) of the *Employment Insurance Regulations*.

<sup>13</sup> See *Sarrazin v Canada (Attorney General)*, 2006 FCA 313, at paragraph 7 and *Canada (Attorney General) v Boivin et al.*, 2003 FCA 125 at paragraphs 4 and 20.

the General Division failed to provide a fair process. I haven't found any reviewable error that the General Division may have made.<sup>14</sup>

## Conclusion

[18] Permission to appeal is refused. This means that the appeal will not proceed.

Elizabeth Usprich  
Member, Appeal Division

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<sup>14</sup> The Federal Court has said I must do this in decisions like *Griffin v Canada (Attorney General)*, 2016 FC 874 and *Karadeolian v Canada (Attorney General)*, 2016 FC 615.