Citation: *MR v Canada Employment Insurance Commission*, 2025 SST 47

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	M. R.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated January 10, 2025 (GE-24-3674)

Tribunal member:	Glenn Betteridge
Decision date:	January 23, 2025
File number:	AD-25-48

Decision

[1] Permission (leave) to appeal is refused. The appeal won't go forward.

Overview

[2] M. R. is the Claimant. Months after his job ended he received a $2,500 special bonus (bonus) from his former employer, after it sold the company.

[3] When he received the bonus he was getting Employment Insurance (EI) regular benefits.

[4] The Canada Employment Insurance Commission (Commission) decided the bonus was earnings. So it allocated then deducted the bonus from the Claimant's EI benefits in the week he received it.[1] This created a $668 overpayment he had to pay back to the Commission.

[5] The General Division dismissed the Claimant's appeal of the Commission's reconsideration decision.

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

Issue

[7] I have to decide whether the Claimant's appeal has a reasonable chance of success.[2]

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[1] Section 19(2) of the *Employment Insurance Act* (EI Act) tells the Commission to deduct earnings in weeks of unemployment when a person is getting benefits. Section 35 of the *Employment insurance Regulations* says what counts as earnings. And section 36 tells the Commission which week or weeks earnings should be deducted from—this is called allocation.
[2] See section 58(2) of the *Department of Employment and Social Development Act* (DESD Act.

I am not giving the Claimant permission to appeal

[8] I read the Claimant's application to appeal.[3] I read the General Division decision. And I reviewed the documents in the General Division file.[4]

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

The test for getting permission to appeal

[10] I can give the Claimant permission to appeal if he shows an arguable case the General Division made an error.

- It used an unfair process or was biased.
- It used its decision-making power improperly, called a jurisdictional error.
- It made an important factual error.
- It made a legal error.[5]

[11] I have to start by considering the grounds of appeal the Claimant set out in his application.[6]

There isn't an arguable case the General Division process was unfair because it went ahead with the hearing without the Claimant

[12] The Claimant checked the box that says the General Division didn't follow procedural fairness.

[13] The General Division makes an error if it uses an unfair process.[7] These are called procedural fairness or natural justice errors. The question is whether a person

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[3] See AD1.
[4] See GD1, GD2, GD3, GD4, GD5, and GD6.
[5] The bullets are the grounds of appeal in section 58(1) of the DESD Act. I call them errors. The Federal Court set out the "arguable case" test in cases like *Brown v Canada (Attorney General)*, 2024 FC 1544 at paragraph 41, citing *Osaj v Canada (Attorney General)*, 2016 FC 115 at paragraph 12.
[6] See *Twardowski v Canada (Attorney General)*, 2024 FC 1326 at paragraph 26.
[7] This is a ground of appeal under section 58(1)(a) of the DESD Act.

knew the case they had to meet, had a full and fair opportunity to present their case, and had an impartial decision-maker consider and decide their case.[8]

[14] The Claimant hasn't argued the General Division Member was biased, prejudiced, or not impartial.

[15] The Claimant argues he didn't get the opportunity to review or comment on certain documents the General Division relied on.[9] He says it was unfair for the General Division to go ahead with the hearing without him, despite "potential issues with the delivery of the hearing notice." He says his right to a fair hearing was compromised because he didn't "confirm receipt" of the email that included the notice of hearing.

[16] The evidence doesn't show an arguable case the General Division used an unfair process. It gave him an opportunity to know the case he had to meet, and an opportunity to fully and fairly present his case. He didn't act on those opportunities.

[17] The General Division rescheduled the first hearing. So, I looked at evidence of whether the Claimant got the new (second) hearing notice—for the December 10, 2024 hearing.[10]

[18] The Claimant's documents show me he is fluent in English and understands it very well. He writes clearly and uses words precisely and carefully. In his application he writes there were "potential issues" with the delivery of the hearing notice. He writes he didn't "confirm receipt." But he doesn't say he didn't get the hearing notice. If he didn't get the notice, I would expect him to write that.

[19] The General Division looked at the evidence about whether the Claimant got the notice of hearing (paragraph 6). It decided he did.

[20] I agree with the General Division. When I reviewed the General Division file, I see the Tribunal emailed him the notice of hearing, using the email address he gave to

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[8] See *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69; and *Kuk v Canada (Attorney General)*, 2024 FCA 74.
[9] See AD1-6.
[10] See GD1, GD5, and GD6.

the Tribunal and which he used to email the Tribunal. The same day the Tribunal staff called and left him a voicemail informing him it emailed the notice of hearing. Then the morning of the day before the hearing the Tribunal staff left a hearing reminder voicemail for him.

[21] Because the General Division was satisfied the Claimant got the notice of hearing, the law says it could go ahead with the hearing without him.[11] And that's what it did. So, there isn't an arguable case this was unfair to the Claimant.

[22] The Claimant says he didn't get the opportunity to review or comment on certain documents. But this isn't what the evidence shows.

[23] The General Division gave him the opportunity to attend the December 10, 2024 hearing. This was an opportunity to challenge the Commission's evidence and arguments. He didn't show up and he hasn't shown any reason why he was prevented from doing that.

[24] The General Division file shows me the Tribunal emailed him the Commission reconsideration file (GD3) and written arguments (GD4). There is no file note saying the email bounced back. So, I find it's more likely than not the Claimant got the Commission's documents. This means he had an opportunity to review them. And an opportunity to send in written comments on the Commission's evidence and arguments before the hearing if he wanted to do that.

[25] So the Claimant hasn't shown there is an arguable case the General Division used an unfair process.

There is no other reason I can give the Claimant permission to appeal

[26] The Claimant checked the three other error boxes and wrote brief arguments for each error. But none of his reasons show an arguable case the General Division made the error he alleges.

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[11] See section 58 of the *Social Security Tribunal Rules of Procedure*.

– Jurisdictional error

[27] The Claimant's argument misunderstands what counts as a jurisdictional error.[12] He says the General Division failed to consider evidence (his employment agreement or compensation structure). Even if that's true, that's not a jurisdictional error.

[28] The General Division correctly stated the two issues it had to decide (paragraph 7). Then decided those issues and no other issues.

[29] So, there isn't an arguable case it made a jurisdictional error.

– Legal error

[30] The Claimant hasn't shown an arguable case the General Division incorrectly applied section 35 or 36 of the *Employment Insurance Regulations* (EI Regulations) or disregarded precedents.[13] The General Division correctly cited the law it had to apply (paragraphs 9, 10, 11, 13, 22, and 23). And then applied that law.

[31] The Claimant doesn't refer to any binding court cases that go against the General Division's interpretation of the EI Regulations. And I'm not aware of any. The General Division's reasons are more than adequate.

[32] So, there isn't an arguable case the General Division made a legal error.

– Important error of fact

[33] The Claimant disagrees with the General Division's finding the $2,500 payment was a one-time bonus payment. But he doesn't say what evidence the General Division ignored or misunderstood when it made that finding. (The General Division could not have ignored or misunderstood his employment agreement or compensation structure—these documents weren't in the evidence.)

[34] The General Division reviewed and weighed the evidence (paragraphs 12, 14 to 19, and 24 to 30). It's findings of fact are supported by the relevant evidence

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[12] See AD1-6.
[13] See AD1-6.

(paragraphs 20, 21, 30 and 31). And I didn't find any evidence that it ignored or misunderstood.

[35] So, there isn't an arguable case the General Division made an important factual error.

Conclusion

[36] The Claimant hasn't shown an arguable case the General Division made an error. And I didn't find an arguable case.

[37] This means I can't give him permission to appeal.

Glenn Betteridge
Member, Appeal Division