



Citation: *KF v Canada Employment Insurance Commission*, 2025 SST 102

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

# **Leave to Appeal Decision**

**Applicant:** K. F.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated January 6, 2025  
(GE-24-3631)

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**Tribunal member:** Glenn Betteridge

**Decision date:** February 7, 2025

**File number:** AD-25-76

## Decision

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

## Overview

[2] K. F. is the Claimant.

[3] She worked two jobs during the period she received Employment Insurance (EI) regular benefits. She didn't report her jobs or income to the Canada Employment Insurance Commission (Commission) on her biweekly reports.

[4] The Commission learned about the Claimant's jobs when it received a record of employment from one of her employers. So the Commission investigated and reconsidered her claim.

[5] The Commission decided she had earnings from her two jobs. It allocated and deducted those earnings from the EI benefits it had paid her. This led to an overpayment and debt. The Commission also imposed a money penalty and a violation because it says the Claimant knowingly made 16 false statements on her biweekly reports. On reconsideration, the Commission removed the violation and reduced the penalty to a warning letter.

[6] The Claimant appealed to the General Division. She challenged the Commission's decision to go back and reconsider her claim. She argued her income was low and she was struggling financially. She also argued she had never been on benefits and the Commission misled her about reporting her income.

[7] The General Division dismissed the Claimant's appeal.

[8] To get permission to appeal the General Division decision, the Claimant has to show her appeal has a reasonable chance of success. Unfortunately, she hasn't.

## Issue

[9] I have to decide whether the Claimant's appeal has a reasonable chance of success. This means I have to decide whether there's an arguable case the General Division made an error.

## I am not giving the Claimant permission to appeal

[10] I read the Claimant's application to appeal.<sup>1</sup> I read the General Division decision. And I reviewed the documents in the General Division file.<sup>2</sup> I didn't listen to the hearing recording. Her application didn't raise any issues that made me think I had to do that to make a justifiable, acceptable, and defensible decision.

[11] The Claimant made essential the same arguments in her application to appeal and in her appeal to the General Division.<sup>3</sup> Unfortunately for the Claimant, the Appeal Division process isn't a do-over of the General Division process. It isn't a chance for her to reargue her case, hoping for a different outcome.

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

## The test for getting permission to appeal

[13] I can give the Claimant permission to appeal if she shows an arguable case the General Division made one of the errors the law lets me consider.<sup>4</sup>

- It used an unfair process or was biased.<sup>5</sup>
- It used its decision-making power improperly, called a jurisdictional error.
- It made an important factual error.

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<sup>1</sup> See AD1.

<sup>2</sup> See GD2, GD3, and GD4.

<sup>3</sup> See GD2 and AD1.

<sup>4</sup> See section 58(2) of the *Department of Employment and Social Development Act* (DESD Act). The Federal Court has said an appeal has a reasonable chance of success where there is an arguable case the General Division made an error. See *Brown v Canada (Attorney General)*, 2024 FC 1544 at paragraph 41, citing *Osaj v Canada (Attorney General)*, 2016 FC 115 at paragraph 12.

<sup>5</sup> The bullets are the grounds of appeal in section 58(1) of the DESD Act. I call them errors.

- It made a legal error.

[14] I have to start by considering the errors the Claimant set out in her application.<sup>6</sup> And because the Claimant is representing herself, I should not mechanistically apply the permission to appeal test.<sup>7</sup>

## **There isn't an arguable case the General Division made an error**

### **– No arguable case the General Division used an unfair process**

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

[16] She argues the Commission acted in bad faith and unjustly when it reconsidered her claim.<sup>8</sup> She says the Commission had the ROE for over a year and never brought up the unreported earnings. It only reconsidered her claim to punish her when she won another appeal at the Tribunal. She also says the Commission's notes that say it attempted to contact her are wrong. That was about the initial review, not the case that was before the General Division.

[17] The General Division makes an error if it uses an unfair process.<sup>9</sup> The question is whether a person 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.<sup>10</sup>

[18] The Claimant's arguments aren't about the process the General Division used or the General Division hearing. She is challenging the Commission's process—the timing of when it acted, whether it acted fairly, and what it wrote in its file notes.

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<sup>6</sup> See *Twardowski v Canada (Attorney General)*, 2024 FC 1326 at paragraph 26. The Federal Court has said this in decisions like *Griffin v Canada (Attorney General)*, 2016 FC 874; *Karadeolian v Canada (Attorney General)*, 2016 FC 615; and *Joseph v Canada (Attorney General)*, 2017 FC 391.

<sup>8</sup> See AD1-5.

<sup>9</sup> This is a ground of appeal under section 58(1)(a) of the DESD Act.

<sup>10</sup> See *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69; and *Kuk v Canada (Attorney General)*, 2024 FCA 74.

[19] The law only lets me consider whether the General Division process and hearing were fair. I can't give her permission to appeal because the Commission process might have been unfair to her.

[20] The General Division process was a *de novo* hearing—in other words, a fresh review of the Commission's decisions. This was her chance to argue the Commission acted improperly. She made arguments about that and the General Division considered her arguments (paragraphs 12, 30 to 32, 76, and 77).

– **There isn't an arguable case the General Division made an error when it decided the Commission exercised its powers judicially**

[21] The General Division considered whether the Commission used its powers properly and fairly given the Claimant's circumstances. And there isn't an arguable case the General Division made an error when it did that.

[22] The General Division considered whether the Commission exercised its discretionary powers judicially. It set out the legal test and reviewed the Claimant's evidence and arguments (paragraphs 26 to 32). Then it weighed the relevant evidence and concluded the Commission used its reconsideration power under section 52 of the *Employment Insurance Act* (EI Act) properly (paragraph 25, and 33 to 45). It found the Commission acted within the legal deadline and acted judicially when it decided to review her claim.

[23] The General Division also considered how the Commission used its discretionary power to impose a penalty under sections 38 and 41.1 of the EI Act. It concluded the Commission acted judicially when it decided to give the Claimant a warning letter instead of a money penalty.

[24] There isn't an arguable case the General Division made an error when it decided the Commission used its discretionary powers judicially. The General Division identified then used the correct legal test. It considered and weighed the relevant evidence for each discretionary decision the Commission made. Its findings of fact, and its decision the Commission acted judicially, are supported by the evidence.

[25] As the General Division rightly pointed out, the Federal Court of Appeal has recently looked at the proper exercise of the Commission's reconsideration power under section 52 (paragraph 41).<sup>11</sup> The Court decided the Commission can reconsider a claim even where it misinformed a claimant, and this led to an overpayment. The Court also decided the Commission can't consider financial hardship when it decides whether to reconsider a claim. The law tells the Commission to consider financial hardship when it decides whether to write-off an overpayment.<sup>12</sup>

– **There isn't an arguable case the General Division made an error when it decided the other issues in the Claimant's appeal**

[26] I also looked at the three other issues the General Division decided. These issues were whether the money she got from two employers was earnings, when to allocate it, and whether the Claimant made false statements on her biweekly reports (paragraphs 17 to 19). I reviewed the Commission's reconsideration file and written arguments. I reviewed what the Claimant wrote on her reconsideration request and Tribunal appeal form.

[27] The General Division correctly identified the issues it had to decide. Then it decided only those issues. And I didn't find an arguable case the General Division made a legal error or an important factual error when it decided these three issues.

[28] Finally, there isn't an arguable case the General Division made an error when it decided it had no power to change the overpayment and debt (paragraphs 84 to 86, and 91). The General Division followed the law, which it had to do.

## **Conclusion**

[29] The Claimant hasn't shown an arguable case the General Division made an error. And I reviewed the General Division decision and file, but didn't find an arguable case it made an error.

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<sup>11</sup> See *Molchan v Canada (Attorney General)*, 2024 FCA 46 at paragraphs 39 and 53.

<sup>12</sup> See section 56(1)(e)(ii) of the *Employment Insurance Regulations*.

[30] This means I can't give her permission to appeal the General Division decision.

[31] I have no doubt that paying back the debt would cause financial hardship for the Claimant and her children. If she can't afford to pay back her debt, she can contact the **Canada Revenue Agency (CRA) Collection Service Centre at 1-866-864-5841**. She can try to negotiate a payment plan or **apply for relief from her debt based on her financial hardship**.

[32] The CRA will consider her current income and expenses if she applies for relief based on financial hardship. Here is a link to the CRA's debt collection policy:

[www.canada.ca/en/revenue-agency/services/forms-publications/publications/ic13-2/ic13-2r1-government-programs-collection-policies.html](http://www.canada.ca/en/revenue-agency/services/forms-publications/publications/ic13-2/ic13-2r1-government-programs-collection-policies.html).

[33] The Claimant lives in Ontario. She might qualify for free legal information, advice, or other help from a legal clinic funded by Legal Aid Ontario. To find her local community legal clinic, she can go to [www.legalaid.on.ca/legal-clinics/](http://www.legalaid.on.ca/legal-clinics/).

Glenn Betteridge  
Member, Appeal Division