



Citation: *YH v Canada Employment Insurance Commission*, 2025 SST 79

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: Y. H.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated January 23, 2025
(GE-24-3946)

Tribunal member: Glenn Betteridge

Decision date: February 4, 2025

File number: AD-25-64

Decision

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

Overview

[2] Y. H. is the Claimant. He went on sick leave and applied for Employment Insurance sickness benefits. The Canada Employment Insurance Commission (Commission) paid him sickness benefits.

[3] In February 2024, he took a two-week vacation outside Canada. This was during his EI claim.

[4] In June 2024, his employer closed his human resources file. It says it mailed him a cheque for vacation he was owed (\$1,559). The Commission decided that money counted as earnings paid by reason of separation from employment. It allocated and deducted those earnings beginning with the week of separation.¹

[5] The Claimant disagreed. He argued his employer approved his vacation, so it should have paid him his vacation pay when he was on vacation—not months later. And the Commission didn't pay him benefits when he was on vacation.

[6] The Claimant appealed to this Tribunal's General Division. The General Division agreed with the Commission and dismissed his appeal.

[7] To get permission to appeal the General Division decision, the Claimant has to show an arguable case the General Division made an error. Unfortunately, he hasn't.

Issues

[8] I have to decide two issues.

¹ See sections 35(2) and 36(9) of the *Employment Insurance Regulations* (EI Regulations), and section 19(2) of the *Employment Insurance Act* (EI Act).

- Is there an arguable case the General Division made an important factual error about the Claimant's vacation dates?
- Is there an arguable case the General Division made any other error the law lets me consider?

I am not giving the Claimant permission to appeal

[9] I read the Claimant's application to appeal.² I read the General Division decision. I reviewed the documents in the General Division file.³ And I listened to the hearing recording.⁴

[10] I have great sympathy for the Claimant. He was earning a low wage, had health issues, and paid for a vacation he needed. His employer approved his vacation request. Later, he went on sick leave. Before he took his vacation, his employer lost the contract at his job site. And his new employer would not honour the vacation approved by his former employer.

[11] But his first employer still owed him the vacation entitlement he had earned. The employer says it paid that money to the Claimant when it closed his HR file—months after he took the vacation.

[12] Unfortunately for the Claimant, the law does not have sympathy for his situation and circumstances. Fairness isn't part of the law about being outside Canada during a claim, or the law about earnings and allocation.

[13] The law about earnings and allocation is complicated. But it is clear about how the Commission must treat vacation pay the employer pays when the employment relationships ends. The General Division had to follow that law. That's what it did. And there isn't an arguable case it made an error when it made its decision.

² See AD1.

³ See GD2, GD3, and GD4.

⁴ The General Division hearing lasted roughly one hour and two minutes.

[14] The fact the Commission didn't pay him benefits when he was on vacation had nothing to do with the fact he was on vacation. It was because he was out of the country during his claim for sickness benefits.⁵ It wasn't because he had earned vacation time, or his employer approved his vacation.

[15] Unfortunately for the Claimant, the Employment Insurance scheme doesn't consider whether the Claimant actually received his vacation pay. The *Employment Insurance Regulations* (EI Regulations) consider whether the money was paid or "payable" to him.⁶ If the Claimant hasn't received his vacation pay from his former employer, he can follow up with the employer, contact his union, or consider making a complaint through the ministry of labour in his province.

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

The test for getting permission to appeal

[17] I can give the Claimant permission to appeal if he shows an arguable case the General Division made one of the errors that the law lets me consider.⁷

- It used an unfair process or was biased.⁸
- It used its decision-making power improperly, called a jurisdictional error.
- It made an important factual error.
- It made a legal error.

⁵ Section 37 of the EI Act says a person isn't entitled to EI benefits for a period they aren't in Canada.

⁶ See section 36(9) of the EI Regulations.

⁷ 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.

⁸ The bullets are the grounds of appeal in section 58(1) of the DESD Act. I call them errors.

[18] I have to start by considering the errors that the Claimant set out in his application.⁹ Because the Claimant is representing himself, I should not apply the permission to appeal test in a mechanistic way.¹⁰

There isn't an arguable case the General Division made an important factual error about the Claimant's vacation and vacation pay

[19] The Claimant checked the box that says the General Division made an important error of fact.¹¹ He argued the General Division made mistakes in his vacation dates in its conclusion.¹² The General Division wrote the employer approved four weeks of vacation from January 15 to February 9, 2024. He says his employer approved January 15 to February 19, 2024. And he was actually on vacation February 4 to 18, 2024.

[20] 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.¹³ Relevant means **legally relevant**.

[21] The General Division didn't ignore or misunderstand relevant evidence. The General Division had to apply the legal test for allocating earnings. Under that test, earnings are allocated based on the reason the employer paid the Claimant his vacation pay.

[22] The General Division reviewed the evidence and decided the employer paid the Claimant \$1559 for two weeks of accrued vacation when he **separated from his employer**—it wasn't a payment for a specific period (paragraphs 18 and 30). And the

⁹ See *Twardowski v Canada (Attorney General)*, 2024 FC 1326 at paragraph 26.

¹⁰ 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.

¹¹ See AD1-3.

¹² See AD1-8.

¹³ 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 Act and the cases that have interpreted the Act.

General Division found the Claimant separated from his employer the week of June 16, 2024 (paragraph 31).

[23] Section 36(9) of the EI Regulations says the Commission had to allocate the money starting that week. And that's what it did. The General Division decided the Commission had properly applied the law to the facts. The General Division didn't ignore or misunderstand any relevant evidence when it made that decision.

[24] I can't accept the Claimant's argument that, "the General Division claims that the dates of my actual vacation do not coincide with the real dates of my vacation and for this reason she decided that this is not a vacation payment, but because I was separated from job."¹⁴ The vacation dates the employer approved weren't relevant to the law the General Division had to apply. The actual dates of the Claimant's vacation weren't relevant either. The General Division understood this. And it didn't base its decision on these dates.

[25] So, the Claimant hasn't shown an arguable case the General Division made an important factual error.

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

[26] The Claimant is self-represented. So, I considered whether there was an arguable case the General Division made another type of error.

– Jurisdictional error

[27] There isn't an arguable case the General Division made a jurisdictional error. It correctly identified the legal issues it had to decide (paragraph 6). And decided only those issues.

– Legal error

[28] There isn't an arguable case the General Division made a legal error.

¹⁴ See AD1-8.

[29] The General Division correctly set out the law it had to use to decide if the money payable to the Claimant was earnings (paragraphs 8 to 10). Then it applied the correct law.

[30] The General Division correctly set out the law it had to use to decide whether the Commission correctly allocated the earnings (paragraphs 19, 21, and 22). Then it used the correct law. The decided cases say a separation from employment takes place when the employment relationship ends.¹⁵ The General Division based its decision on the end of the employment relationship (paragraphs 29 to 31).

[31] And the General Division's reasons are more than adequate.

– **Procedural fairness**

[32] The Claimant didn't argue the General Division process or hearing were unfair. And I didn't read or hear anything that would suggest that.

Conclusion

[33] The Claimant hasn't shown an arguable case the General Division made an error the law lets me consider. And I didn't find an arguable case.

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

Glenn Betteridge
Member, Appeal Division

¹⁵ See for example *CUBs* 17529, 22491, 60571, 73115, 78075, and 78612.