



Citation: *ZL v Canada Employment Insurance Commission*, 2025 SST 213

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

# **Leave to Appeal Decision**

**Applicant:** Z. L.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated January 14, 2025  
(GE-24-4023)

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**Tribunal member:** Melanie Petrunia

**Decision date:** March 11, 2025

**File number:** AD-25-103

## Decision

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

## Overview

[2] The Applicant, Z. L. (Claimant) applied for employment insurance (EI) benefits on July 31, 2024, and an initial claim was established effective July 28, 2024. On the application, the Claimant said that the last day worked was June 15, 2024.

[3] The Claimant's employer issued two Records of Employments (ROE). The first showed his last day paid as June 15, 2024. A second ROE issued September 7, 2024, showed the last day that the Claimant was paid for was July 29<sup>th</sup>.

[4] The Respondent, the Canada Employment Insurance Commission (Commission), recalculated the claim to include the second ROE. The benefit rate and weeks of entitlement did not change, but the Commission allocated earnings during the claimant's waiting period. This resulted in an overpayment of \$638.

[5] The Claimant appealed the Commission's decision to the Tribunal's General Division and his appeal was dismissed. The General Division found that the Claimant's benefit period could not be postdated, and the Commission correctly allocated his earnings.

[6] The Claimant now wants to appeal the General Division decision to the Tribunal's Appeal Division. However, he needs permission for his appeal to move forward. He argues that the General Division made an error of law and based its decision on important errors of fact.

[7] I have to decide whether there is some reviewable error of the General Division on which the appeal might succeed. I am refusing leave to appeal because the Claimant's appeal has no reasonable chance of success.

## Issues

[8] The issues are:

- a) Is there an arguable case that the General Division based its decision on an important error of fact?
- b) Is there an arguable case that the General Division made an error of law?
- c) Does the Claimant raise any other reviewable errors of the General Division upon which the appeal might succeed?

## I am not giving the Claimant permission to appeal

[9] The legal test that the Claimant needs to meet on an application for leave to appeal is a low one: Is there any arguable ground on which the appeal might succeed?<sup>1</sup>

[10] To decide this question, I focused on whether the General Division could have made one or more of the relevant errors (or grounds of appeal) listed in the *Department of Employment and Social Development Act* (DESD Act).<sup>2</sup>

[11] An appeal is not a rehearing of the original claim. Instead, I must decide whether the General Division:

- a) failed to provide a fair process;
- b) failed to decide an issue that it should have, or decided an issue that it should not have;
- c) based its decision on an important factual error;<sup>3</sup> or

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<sup>1</sup> This legal test is described in cases like *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12 and *Ingram v Canada (Attorney General)*, 2017 FC 259 at para 16.

<sup>2</sup> DESD Act, s 58(2).

<sup>3</sup> The language of section 58(1)(c) actually says that the General Division will have erred if it bases its decision on a finding of fact that it makes in a perverse or capricious manner or without regard for the material before it. The Federal Court has defined perverse as “willfully going contrary to the evidence” and defined capricious as “marked or guided by caprice; given to changes of interest or attitude according

d) made an error in law.<sup>4</sup>

[12] Before the Claimant can move on to the next stage of the appeal, I have to be satisfied that there is a reasonable chance of success based on one or more of these grounds of appeal. A reasonable chance of success means that the Claimant could argue his case and possibly win. I should also be aware of other possible grounds of appeal not precisely identified by the Claimant.<sup>5</sup>

### **There is no arguable case that the General Division erred**

[13] In its decision, the General Division first considered whether the Commission acted judicially when it reconsidered the Claimant's claims. It found that the Commission allocated the earnings and reconsidered the claim less than two months after the benefits were paid after reviewing the second ROE issued by the employer.<sup>6</sup>

[14] The General Division found that the Claimant's interruption of earnings occurred the week of July 28, 2024.<sup>7</sup> He submitted his application for benefits on July 31, 2024, which meant that his benefit period starts July 28, 2024.<sup>8</sup> The General Division found that the *EI Act* does not allow it to postdate a benefit period.

[15] The General Division then explained that the Claimant's earnings for the week of July 28, 2024, had to be allocated during his waiting period. It said that it does not have the authority to decide on requests for write-off or reduction of overpayments.<sup>9</sup>

[16] In his application for leave to appeal, the Claimant argues that the General Division made important errors of fact. For this ground of appeal, the General Division

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to whim or fancies; not guided by steady judgment or intent" *Rahi v Canada (Minister of Citizenship and Immigration)* 2012 FC 319.

<sup>4</sup> This paraphrases the grounds of appeal.

<sup>5</sup> *Karadeolian v Canada (Attorney General)*, 2016 FC 615; *Joseph v Canada (Attorney General)*, 2017 FC 391.

<sup>6</sup> General Division decision at paras 23 to 25.

<sup>7</sup> General Division decision at para 26.

<sup>8</sup> General Division decision at paras 31 to 34.

<sup>9</sup> General Division decision at paras 42 to 44.

has to have based its decision on a finding of fact that ignored or misunderstood relevant evidence, or where its finding does not rationally follow from the evidence.<sup>10</sup>

[17] The Claimant says that the General Division made the following factual errors:

- a) It overlooked evidence that his claim was unjustly set up using the wrong ROE rather than correcting the error.
- b) It overlooked evidence that he was misled into applying for benefits too early because of a system error with his ROEs.<sup>11</sup>

[18] There is no arguable case that the General Division based its decision on factual errors or ignored relevant evidence. As the General Division discussed in its decision, because the Claimant did not apply for benefits until July 31, 2024, his benefit period was established as of July 28, 2024.<sup>12</sup> The second ROE did not impact the proper benefit period commencement date as it remained the Sunday of the week in which the interruption of earnings occurred.

[19] The Claimant applied for benefits after he stopped working, although he did not yet have the second ROE. He did not report any earnings for the week of July 28<sup>th</sup>. The General Division acknowledged that the Claimant says he was misled by the information on the first ROE and a system error led to the overpayment.<sup>13</sup> There is no arguable case it overlooked this evidence or that this evidence was relevant to its determination of when the interruption of earnings occurred, and the benefit period commenced.

[20] The Claimant says that the General Division made an error of law when it found that the *EI Act* does not allow the postdating of benefit periods. He says that this is contradicted by the Commission's policy to postdate when it is to a claimant's

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<sup>10</sup> See section 58(1)(c) of the *EI Act* which states "the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it."

<sup>11</sup> AD1-9

<sup>12</sup> General Division decision at paras 31 and 34.

<sup>13</sup> General Division decision at para 10.

advantage. He also argues that claimants should be able to correct mistakes in their applications and write-off should be considered.<sup>14</sup>

[21] The Claimant says that correcting a system error does not equate to rewriting the law. Given that his last day of work was July 29, 2024, the Claimant says that a reasonable person would have applied for EI on August 6<sup>th</sup>. He says that it is unjust to hold him financially responsible for system errors beyond his control.<sup>15</sup>

[22] There is no arguable case that the General Division made an error of law. It properly stated and applied the law concerning the commencement of a benefit period. It also correctly noted that a Commission policy is not the law.<sup>16</sup> As the Commission stated in their submissions, the Claimant had already been paid benefits for the period of July 28 to August 10. Changing the benefit period commencement date would not eliminate the overpayment but rather increase it.<sup>17</sup>

[23] There is no arguable case that the General Division ignored relevant evidence or made errors of law. It considered the Claimant's arguments and evidence and properly applied the law.

[24] Aside from the Claimant's arguments, I have also considered the other grounds of appeal. The Claimant has not pointed to any procedural unfairness on the part of the General Division, and I see no evidence of procedural unfairness. There is no arguable case that the General Division made an error of jurisdiction or an error of law.

[25] The Claimant has not identified any errors of the General Division upon which the appeal might succeed. As a result, I am refusing leave to appeal.

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<sup>14</sup> AD1-10

<sup>15</sup> AD1-9

<sup>16</sup> General Division decision at para 32.

<sup>17</sup> GD4-3

## **Conclusion**

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

Melanie Petrunia  
Member, Appeal Division