



Citation: *SF v Canada Employment Insurance Commission*, 2025 SST 316

Social Security Tribunal of Canada Appeal Division

Extension of Time and Leave to Appeal Decision

Applicant: S. F.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated December 16, 2024
(GE-24-3561)

Tribunal member: Solange Losier

Decision date: April 2, 2025

File number: AD-25-157

Decision

[1] An extension of time to apply to the Appeal Division is granted. Leave (permission) to appeal is refused. The appeal will not proceed.

Overview

[2] S. F. is the Claimant. She applied for Employment Insurance benefits (benefits). A benefit period was first established in 2022 and again, in 2023.

[3] The Canada Employment Insurance Commission (Commission) recalculated her claim because it discovered that it made a calculation error using the wrong number of hours and earnings. They had mistakenly used a Record of Employment (ROE) that belonged to another person to establish the claim.

[4] After recalculating, the Commission determined that the Claimant's weekly benefit rate would change from \$650.00 to \$367.00.¹ It also reduced the number of weeks she was entitled to receive. This resulted in an overpayment of benefits totalling \$7,358.00.² The Claimant appealed the Commission's decision to the General Division.

[5] The General Division concluded the same and dismissed her appeal.³ It found that the weekly benefit rate was correctly recalculated by the Commission. It determined that she was liable to repay the overpayment.

[6] The Claimant is now asking for permission to appeal.⁴ I am denying her request because her appeal has no reasonable chance of success.

Preliminary matters

[7] I wrote to the Claimant to ask her to identify which ground of appeal she was arguing because she hadn't identified one in her application form.⁵ The Claimant wrote

¹ See Commission's initial and reconsideration decisions at pages GD3-37 to GD3-38 and GD3-46.

² See notice of debt at pages GD3-39 to GD3-40.

³ See General Division decision at pages AD1A-1 to AD1A-4.

⁴ See Application to the Appeal Division at pages AD1-1 to AD1-10.

⁵ See Tribunal letter dated March 6, 2025.

back explaining that the General Division didn't follow a fair process and provided further information about her appeal.⁶

Issues

[8] The issues in this appeal are:

- a) Was the application to the Appeal Division late?
- b) If so, should I extend the time for filing the application?
- c) Is there an arguable case that the General Division didn't follow a fair process?

The application to the Appeal Division was late

[9] The deadline to file an application to the Appeal Division in the prescribed form and manner is 30 days after the day on which the General Division decision was communicated to her in writing.⁷

[10] In her application to the Appeal Division, the Claimant didn't identify the date she got the General Division decision.⁸

[11] The General Division decision was issued on December 16, 2024. The file shows that it was emailed to her on the same date. The Tribunal received an email from the Claimant on December 27, 2024, acknowledging receipt of the General Division decision and asking about next steps.

[12] I find that the General Division decision was communicated to the Claimant by December 17, 2024. This is the following business day after the General Division decision was emailed to her.⁹

⁶ See Claimant's reply at pages AD1B-1 to AD1B-2.

⁷ See section 57(1)(a) of the *Department of Employment and Social Development* (DESD Act).

⁸ See page AD1-3.

⁹ See section 22(3) of the *Social Security Tribunal Rules of Procedure* (SST Rules).

[13] I find that the Claimant's application to the Appeal Division was filed late. The deadline to file her application to the Appeal Division was January 16, 2025. The Tribunal only received the Claimant's application to the Appeal Division via email on March 3, 2025.¹⁰

I am extending the time for filing the application

[14] When deciding whether to grant an extension of time, I have to consider whether the Claimant has a reasonable explanation for why the application is late.¹¹

[15] The Claimant explained that the application was late because she has been dealing with multiple issues including, her own mental health, disability, financial issues and family members who have had some recent health issues.¹²

[16] I find that the Claimant has provided a reasonable explanation for the late appeal, so I am giving her an extension of time to file the application.

Analysis

[17] An appeal can proceed only if the Appeal Division gives permission to appeal.¹³ I must be satisfied that the appeal has a reasonable chance of success.¹⁴ This means that there must be some arguable ground that the appeal might succeed.¹⁵

[18] I can only consider certain types of errors. I have to focus on whether the General Division could have made one or more of the relevant errors (this is called the "grounds of appeal").

¹⁰ See pages AD1-1 to AD1-10.

¹¹ See section 27(2) of the *SST Rules*.

¹² See page AD1-7.

¹³ See section 56(1) of the DESD Act.

¹⁴ See section 58(2) of the DESD Act.

¹⁵ See *Osaj v Canada (Attorney General)*, 2016 FC 115, at paragraph 12.

[19] The possible grounds of appeal to the Appeal Division are that the General Division did one of the following:¹⁶

- proceeded in a way that was unfair
- acted beyond its powers or refused to exercise those powers
- made an error in law
- based its decision on an important error of fact.

[20] The Claimant argues that the General Division didn't follow a fair process, but many of her arguments overlap with other grounds of appeal.¹⁷ Given that, I'll also consider whether the General Division made an error of jurisdiction, error of law, and error of fact.

– **The Claimant's main arguments to the Appeal Division**

[21] The Claimant's main arguments are summarized as follows:¹⁸

- The General Division didn't hear the distress in her voice, or tears in her words when she explained that she had no money while on disability.
- There was no reasoning and no empathy from the General Division.
- The General Division didn't explain how she came up with the decision and kept reciting the "*Service Canada Employment Standard Act*."
- Given the toll it has taken on her, she just wishes the \$7,358.00 overpayment could be forgiven.
- Service Canada made the error, but she is the one being penalized.
- As well, the General Division was missing an important document, the ROE from her former employer "X."

¹⁶ See section 58(1) of the DESD Act.

¹⁷ See page AD1B-2.

¹⁸ See pages AD1-6 to AD1-7 and AD1B-2

I am not giving the Claimant permission to appeal

– There is no arguable case that the General Division didn't follow a fair process

[22] Procedural fairness” is about the fairness of the process. It includes procedural protections including the right to an unbiased decision-maker, the right of a party to be heard and to know the case against them and to be given an opportunity to respond.

[23] Put another way, if the General Division didn't follow a “fair process,” then I can intervene.¹⁹

[24] I listened to the audio recording of the General Division hearing and it revealed the following.

[25] The audio recording shows that the hearing lasted around 30 minutes. The General Division explained the legal test it had to apply, the process and the applicable law.

[26] At the beginning of the hearing, the Claimant told the General Division that she was feeling anxious, nervous, scared and teary. The General Division assured the Claimant that it would make the hearing simple, friendly and minimize the stress in the proceeding. It noted that if the Claimant needed a break or wanted to ask a question, to do so at any time. The Claimant thanked the General Division member for understanding.²⁰

[27] The audio recording shows that the General Division was respectful, and empathetic towards the Claimant throughout the entire hearing.

[28] There is no arguable case that the General Division didn't follow a fair process.²¹

¹⁹ See section 58(1)(a) of the DESD Act.

²⁰ Listen to General Division audio recording at 3:00 to 4:23.

²¹ See section 58(1)(a) of the DESD Act.

– **There is no arguable case the General Division made an error of law or error of jurisdiction**

[29] An error of law happens when the General Division does not apply the correct law or uses the correct law but misunderstands what it means or how to apply it.²²

[30] An error of jurisdiction means that the General Division didn't decide an issue it had to decide or decided an issue it did not have the authority to decide.²³

[31] The issue under appeal was the Claimant's "weekly benefit rate".

[32] The law says that a weekly benefit rate is 55% of the weekly insurable earnings (up to a maximum amount).²⁴ The weekly insurable earnings is calculated by dividing the total of all insurable earnings during the calculation period using a "divisor" between 14 and 22 weeks, depending on the rate of unemployment.²⁵

[33] The General Division correctly stated the law in its decision.²⁶ It concluded that the Claimant got more benefits than she was entitled to get, resulting in a \$7,358.00 overpayment. It explained with reasons why it made the decision it did.²⁷

[34] The Claimant's main argument is that the overpayment should be forgiven because Service Canada made the calculation error. She is essentially making the same argument she made before the General Division.

[35] The audio recording shows that the General Division verbally explained its jurisdiction about the overpayment write off and invited questions from the Claimant. The Claimant expressed her disagreement and frustration about the law itself and the impact the overpayment will have on her.²⁸

²² See section 58(1)(b) of the DESD Act.

²³ See section 58(1)(a) of the DESD Act.

²⁴ See section 14 of the *Employment Insurance Act* (EI Act).

²⁵ See section 14(2) of the EI Act.

²⁶ See paragraphs 9, 10, 16 and 18 of the General Division decision.

²⁷ See paragraphs 11-18 of the General Division decision and pages GD3-31 to GD3-36.

²⁸ Listen to General Division audio recording at 14:17.

[36] The General Division correctly stated in its written decision that it didn't have the jurisdiction or authority to write off the overpayment because only the Commission has that power.²⁹ It also noted that the Commission had already considered writing off the overpayment, but that request was denied.³⁰

[37] Neither the General Division (nor the Appeal Division) has the legal authority to write off the overpayment. Only the Commission has the power to write off the overpayment.³¹

[38] The Claimant may disagree with the law as stated, but a disagreement with the law isn't a reviewable error.

[39] If the Claimant is not satisfied with the Commission's decision about the overpayment write off, she can go to the Federal Court and ask for judicial review. She can also discuss a repayment plan with the Canada Revenue Agency.

[40] There is no arguable case that the General Division made an error of jurisdiction or error of law.³² The General Division has no authority to write off, forgive or waive the overpayment. It correctly stated the law and provided reasons for its decision.

– There is no arguable case that the General Division based its decision on an important error of fact

[41] An error of fact happens when the General Division has "based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it."³³

[42] The Claimant argues that the General Division was missing the ROE from her former employer "X."

²⁹ See paragraphs 15–16 of the General Division decision.

³⁰ See paragraph 17 of the General Division decision.

³¹ See sections 112.1 and 113 of the *Employment Insurance Act*.

³² See sections 58(b)(c) of the DESD Act.

³³ See section 58(1)(c) of the DESD Act.

[43] The General Division told the Claimant that the ROE from X was not part of the file. However, it noted that it would ask the Commission to provide a copy because it was an important document needed in order to make a decision about her weekly benefit rate.³⁴

[44] After the hearing, the General Division asked the Commission for the relevant ROE.³⁵ The Commission replied and submitted a copy of the ROE from X.³⁶

[45] The record shows that there were two ROEs before the General Division—one from X and another one from another employer called “VT.”³⁷

[46] The General Division didn’t explicitly refer to either ROE in its decision, but it didn’t need to refer to every piece of evidence in the file. Case law holds that an administrative tribunal charged with fact-finding is presumed to have considered all the evidence before it and is not required to mention every piece of evidence in its reasons.³⁸ In this case, there is no basis to set aside the presumption. The General Division can be presumed to have considered all of the evidence, including the ROE from X.

[47] The General Division found that the Commission had added earnings from another ROE that did not belong to the Claimant (see page GD9-4 for a redacted copy of that other person’s ROE). That error resulted in doubling the Claimant’s earnings so she got a higher weekly benefit rate of \$650.00, but should have only received a weekly benefit rate of \$367.00 based on her earnings.³⁹

[48] The overpayment chart in the file identifies the corrected weekly amounts after the recalculation.⁴⁰

³⁴ Listen to General Division audio recording at 7:50 to 10:28.

³⁵ See pages GD8-1 to GD8-3.

³⁶ See pages GD9-1 to GD9-4.

³⁷ See pages GD3-29 and GD9-3.

³⁸ See *Simpson v Canada (Attorney General)*, 2012 FCA 82 and *Lee Villeneuve v Canada (Attorney General)*, 2013 FC 498.

³⁹ See paragraph 11 of the General Division decision.

⁴⁰ See page GD3-47.

[49] The Claimant may disagree with the findings made by the General Division, but that isn't a reviewable error. The Appeal Division has a limited role. I cannot intervene to reweigh the evidence or to settle a disagreement about the application of settled legal principles to the facts of a case.⁴¹

[50] There is no arguable case that the General Division based its decision on an important error of fact.⁴² It considered both of the Claimant's ROEs. Its key findings were consistent with the facts and evidence.⁴³

– **There are no other reasons for giving the Claimant permission to appeal**

[51] Aside from the Claimant's arguments, I reviewed the file, the decision under appeal and listened to the audio recording. I am satisfied that the General Division didn't misinterpret or fail to consider any relevant evidence.⁴⁴

Conclusion

[52] An extension of time is granted. Permission to appeal is refused. This means that the Claimant's appeal will not proceed. It has no reasonable chance of success.

Solange Losier
Member, Appeal Division

⁴¹ See *Garvey v Canada (Attorney General)*, 2018 FCA 118.

⁴² See section 58(1)(c) of the DESD Act.

⁴³ See pages GD3-31 to GD3-39.

⁴⁴ The Federal Court recommends doing such a review in *Karadeolian v Canada (Attorney General)*, 2016 FC 165, at paragraph 10.