



Citation: *DC v Canada Employment Insurance Commission*, 2025 SST 397

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: D. C.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated February 26, 2025
(GE-25-420)

Tribunal member: Solange Losier

Decision date: April 17, 2025

File number: AD-25-246

Decision

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

Overview

[2] D. C. is the Claimant. He applied for and received Employment Insurance regular benefits (benefits). A benefit period was established in March 2015.

[3] On June 1, 2017, the Canada Employment Insurance Commission (Commission) decided that the Claimant had received earnings during his benefit period and determined that he knowingly made six false representations.¹ This resulted in a notice of debt for the overpayment of benefits.²

[4] A few years later, the Claimant asked the Commission to reconsider its decision.³ On May 29, 2023, the Commission refused to reconsider its decision because more than 30 days had passed since the decision was communicated to him.⁴

[5] The Claimant then appealed that decision to the General Division on February 10, 2025.⁵

[6] The General Division concluded that the Claimant hadn't brought his appeal in time because it was more than one year from when the Commission's reconsideration decision was communicated to him. As a result, it determined that his appeal could not proceed.⁶

[7] The Claimant is now asking the Appeal Division for permission to appeal.⁷ He needs permission for the appeal to move forward.

¹ See Commission's initial decision at pages GD3-12 to GD3-14.

² See Notice of Debt at page GD3-15.

³ See Request for Reconsideration at pages GD3-18 to GD3-19.

⁴ See Commission's refusal to reconsider its decision at page GD3-22.

⁵ See Appeal to the General Division at pages GD2-1 to GD2-7.

⁶ See General Division decision at pages AD1A-1 to AD1A-4.

⁷ See Application to the Appeal Division at pages AD1-1 to AD1-6.

[8] I am denying the Claimant's request for permission to appeal because it has no reasonable chance of success.

Issue

[9] Is there an arguable case that the General Division didn't follow a fair process?

Analysis

– The test for getting permission to appeal

[10] An appeal can only proceed if the Appeal Division gives permission to appeal.⁸ I must be satisfied that the appeal has a reasonable chance of success.⁹ This means that there must be some "arguable ground" that the appeal might succeed.¹⁰

[11] The possible grounds of appeal to the Appeal Division are that the General Division did one of the following:¹¹

- 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.

[12] The Claimant argues that the General Division didn't follow a fair process, so that's what I will focus on.¹²

– The Claimant argues that the General Division didn't follow a fair process

[13] "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

⁸ See section 56(1) of the *Department of Employment and Social Development Act* (DESD Act).

⁹ See section 58(2) of the DESD Act. I must refuse leave to appeal if I find the "appeal has no reasonable chance of success."

¹⁰ See *Osaj v Canada (Attorney General)*, 2016 FC 115, at paragraph 12.

¹¹ See section 58(1) of the DESD Act.

¹² See section 58(2) of the DESD Act.

heard and to know the case against them and to be given an opportunity to respond. If the General Division proceeded in a manner that was unfair, then I can intervene.¹³

[14] The Claimant argues that this has been a long-term battle, and his reasons continue to be ignored. He says there should have been verbal communication to discuss the problem, but there was zero communication after selecting that request in the first form. He also says there should be an investigation, similar to law enforcement. For these reasons, he says that the General Division didn't follow a fair process.¹⁴

[15] I think the Claimant might be arguing that the General Division didn't follow a fair process because he didn't get a chance to have an oral hearing to present his case. He is also saying that there should have been an investigation into what happened.

[16] The Claimant's appeal forms to the General Division show that he requested a videoconference or an in-person hearing.¹⁵ The *Social Security Tribunal Regulations* (SST Regulations) require that the Tribunal follow the format of hearing that a party is asking for.¹⁶ There are some exceptions.¹⁷

[17] There was no oral hearing held by the General Division because the decision was made in writing. Even so, there is no arguable case that the General Division didn't follow a fair process by not following the Claimant's preference for an oral hearing. Let me explain why.

[18] The law says that a person has to appeal the Commission's reconsideration decision no more than 30 days after the Commission has communicated its decision to them.¹⁸ If they file their appeal with the General Division after 30 days, it's considered late. The Commission has to show that its decision was communicated to the person.

¹³ See section 58(1)(a) of the DESD Act.

¹⁴ See pages AD1-3 and AD1B-1.

¹⁵ See page GD2-3.

¹⁶ See section 2(1) of the *Social Security Tribunal Regulations* (SST Regulations). The person appealing the decision chooses the format of hearing.

¹⁷ See section 2(3) of the *SST Regulations*.

¹⁸ See section 52(1)(a) of the DESD Act.

[19] When an appeal is filed late, the General Division can extend the time if the person gives a reasonable explanation for filing late.¹⁹ However, in no case may an appeal be brought **more than one year** after the day on which it was communicated to them.²⁰

[20] The Commission's reconsideration decision (dated May 29, 2023) shows that it refused to reconsider its decision because more than 30 days had passed since the decision was communicated to the Claimant.²¹

[21] The only issue under appeal and before the General Division was whether the Claimant had brought his appeal more than one year after the Commission's reconsideration decision was communicated to him.²²

[22] The General Division had to first decide when the Commission's reconsideration decision was communicated to the Claimant. Once that communication date was established, then the 30-day period started to count, as well as the one-year maximum deadline.

[23] The General Division decided that the Commission's reconsideration decision was verbally communicated to him on May 29, 2023.²³ It explained that he was verbally informed about the decision and his appeal rights during a call he had with the Commission on the same date.²⁴ It relied on the Commission's notes from their telephone conversation.²⁵

[24] The General Division noted that the Commission had mailed out the reconsideration decision to him and that Canada Post "usually" delivers mail within 10 days in Canada.²⁶ It acknowledged that the Claimant had told the Commission

¹⁹ See section 27(2) of the *Social Security Tribunal Rules of Procedure* (SST Rules).

²⁰ See section 52(2) of the DESD Act.

²¹ See page GD3-22.

²² See sections 112 and 113 of the *Employment Insurance Act* (EI Act).

²³ See paragraphs 8 and 12 of the General Division decision.

²⁴ See paragraph 13 of the General Division decision.

²⁵ See page GD3-20.

²⁶ See paragraph 13 of the General Division decision.

“He might be moving soon.” It concluded that even if he didn’t get the reconsideration decision by mail, he was verbally told about it on May 29, 2023.²⁷

[25] The General Division’s decision was based on the verbal communication date on May 29, 2023, and not the mailing date.

[26] The General Division found that he had filed his appeal to the General Division on February 10, 2025.²⁸ It concluded that his appeal was filed late—more than one year from when the Commission’s reconsideration decision was communicated to him on May 29, 2023. Because of that, it couldn’t give him more time to appeal, and his appeal would not proceed.

[27] The General Division wasn’t persuaded by the Claimant’s assertion that his appeal was not made late, and that he contacted the Tribunal in 2023 when he received the decision, and again in 2024 when Canada Revenue Agency garnished his tax rebates to repay his overpayment debt.²⁹

[28] There is no arguable case that the General Division didn’t follow a fair process in this case.³⁰ The reason the Claimant’s appeal didn’t proceed to an oral hearing at the General Division was because he had filed it late—more than one year after the reconsideration decision was communicated to him. His appeal could not proceed by law. Also, the General Division has no power to conduct investigations.

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

[29] I reviewed the file and examined the General Division decision. I did not find any relevant evidence that the General Division might have ignored or misinterpreted.³¹

²⁷ See paragraph 14 of the General Division decision.

²⁸ See paragraph 16 of the General Division decision.

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

³⁰ See section 58(1)(a) of the DESD Act.

³¹ The Federal Court has suggested such a review in decisions like *Griffin v Canada (Attorney General)*, 2016 FC 874 and *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

Conclusion

[30] 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