



Citation: *AE v Canada Employment Insurance Commission*, 2025 SST 421

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: A. E.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated April 1, 2025
(GE-25-614)

Tribunal member: Glenn Betteridge

Decision date: April 25, 2025

File number: AD-25-266

Decision

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

[2] I strongly encourage the Canada Employment Insurance Commission to send A. E. an accounting and overpayment breakdown for her claim. This might help her understand the Commission's decisions.

Overview

[3] A. E. is the Claimant. She wants permission to appeal a General Division decision. I can give her permission if her appeal has a reasonable chance of success.

[4] The law says the Commission has to allocate and deduct money a person gets from their employer to settle a lawsuit.¹ When the lawsuit settles after a person has received EI benefits, this causes an overpayment the person has to pay back to the Commission.²

[5] The General Division decided the Claimant's settlement money was earnings. It found the Commission correctly allocated those earnings to weeks in her EI claim. This created an overpayment. Then it found the Commission acted fairly and properly, and within the 36-month deadline, when it reconsidered her claim.³ So the General Division dismissed her appeal. And it decided she had to pay back the overpayment.

[6] The Claimant argues the General Division didn't follow procedural fairness and it made a legal error.⁴ She says critical aspects of her claim remain unresolved because the General Division decided it didn't have the jurisdiction to decide those aspects. She

¹ See section 45 of the *Employment Insurance Act* (EI Act). Section 35 of the *Employment Insurance Regulations* (EI Regulations) says what counts as earnings. Section 36 of the EI Regulations tells the Commission what weeks to allocate the earnings. And section 19 of the EI Act tells the Commission the percentage of weekly earnings it has to deduct from the person's weekly EI benefits.

² See section 43 of the EI Act.

³ The General Division uses "acted judicially." I am using "acted fairly and properly" to mean the same thing.

⁴ See the Claimant's application to appeal at AD1-4, AD1-12, and AD1-13.

wants the Appeal Division to reassess and recalculate her claim. She wants the overpayment written off because of the Commission's delay and miscommunication.

[7] Unfortunately for the Claimant, I can't give her permission to appeal. The General Division made a jurisdictional error. But that error doesn't give her a reasonable chance to win her appeal.

Issue

[8] Does the Claimant's appeal have a reasonable chance of success?

I'm not giving the Claimant permission to appeal

[9] I read the Claimant's application to appeal.⁵ I read the General Division decision. I reviewed the documents in the General Division file.⁶ And I listened to the hearing recording.⁷ Then I made my decision.

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

The permission to appeal test screens out appeals that don't have a reasonable chance of success⁸

[11] I can give the Claimant permission to appeal if her appeal has a reasonable chance of success.⁹ This means she has to show an **arguable ground of appeal** upon which her appeal **might succeed**.¹⁰

[12] I can consider four grounds of appeal, which I call **errors**.¹¹ The General Division

- used an unfair process or wasn't impartial (a procedural fairness error)
- didn't use its decision-making power properly (a jurisdictional error)

⁵ See AD1.

⁶ See GD2 to GD8.

⁷ The hearing lasted approximately 25 minutes.

⁸ See *Paradis v Canada (Attorney General)*, 2016 FC 1282 at paragraph 32.

⁹ See section 58(2) of the *Department of Employment and Social Development Act* (DESD Act).

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

¹¹ See section 58(1) of the DESD Act.

- made a legal error
- made an important factual error

[13] The Claimant's reasons for appeal set out the key issues and central arguments I have to consider.¹² Because the Claimant is representing herself, I will also look beyond her reasons when I apply the permission to appeal test.¹³

There isn't an arguable case the General Division process was unfair

[14] The Claimant checked the procedural fairness error box on her application form. But her explanation and reasons aren't about the fairness of the General Division process.¹⁴

[15] Procedural fairness or natural justice is about 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.¹⁵

[16] None of the Claimant's arguments point to these issues. Her reasons show me her argument is about jurisdiction—the General Division's legal authority to decide an issue in an appeal. In the next section I will consider whether the General Division made a jurisdictional error.

The General Division made a jurisdictional error, but it doesn't give the Claimant's appeal a reasonable chance of success

[17] The General Division makes a jurisdictional error if it decides an issue it has no power to decide or doesn't decide an issue it has to decide.

¹² See *Hazaparu v Canada (Attorney General)*, 2024 FC 928 at paragraph 13.

¹³ The Federal Court has said the Appeal Division should not apply the leave to appeal test mechanistically and should review the General Division record. See for example *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.

¹⁴ See AD1-4, AD1-12, and AD1-13.

¹⁵ See *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69; and *Kuk v Canada (Attorney General)*, 2024 FCA 74.

– **The Claimant’s arguments don’t show a jurisdictional error**

[18] The Claimant didn’t dispute whether the amount she received was considered earnings or how it was applied.¹⁶ She says she has always accepted those facts.

[19] She says her concern has consistently been about the Commission process: how her claim was handled, the conflicting information she received, and the lack of clear communication that ultimately led to her overpayment.¹⁷ The Commission told her to appeal to the General Division.

[20] She argues the General Division decision has left her with unanswered questions because it failed to address core procedural and administrative issues. The General Division referred her back to the Commission (Service Canada) to get answers. She labels this the cycle of being redirected without resolution.

[21] She asked the General Division to remove her debt.¹⁸ She believes she isn’t responsible for the overpayment because she acted diligently. But the Commission waited to act on her information, sent her a letter by, and misinformed her.

[22] The Commission’s reconsideration decision was about three things.¹⁹ Was the money the Claimant got from her employer **earnings**? If so, to which weeks in her claim should the Commission **allocate her earnings**? In the Claimant’s case, when the Commission allocated her earnings it led to an **overpayment and notice of debt** for \$7,388. The Claimant appealed that decision.

[23] The General Division correctly stated the three issues it had to decide, based on the reconsideration decision and Claimant’s appeal (paragraph 6). Then it decided those three issues.

- The settlement money counts as earnings (paragraphs 7 to 16).

¹⁶ See AD1-5.

¹⁷ See AD1-4 and AD1-12.

¹⁸ See GD2-5.

¹⁹ See the reconsideration decision at GD3-53. It says the Commission is maintaining its original decision, which is at GD3-32.

- The Commission allocated her earnings to the correct week in her claim (paragraphs 17 to 24).
- The Claimant has to repay the overpayment, which the Commission calculated correctly, and only the Commission can write off (paragraphs 25 to 32, and 36).

[24] The General Division correctly explained it had no power to write off the overpayment or review the Commission's decision about that (paragraph 36). So that's not a jurisdictional error. And the General Division didn't make a jurisdictional error because it didn't decide the number of weeks of benefits she was entitled to (paragraphs 37 and 38). That wasn't part of the Commission's reconsideration decision the Claimant appealed to the General Division. So the General Division had no power to decide that issue.

[25] So the Claimant hasn't shown an arguable case the General Division made a jurisdictional error.

– **The Commission didn't use its reconsideration power, so the General Division had no jurisdiction to decide if it used that power fairly, properly, and in time**

[26] The General Division went on to decide an issue it didn't have the jurisdiction to decide. It considered whether the Commission used its EI Act section 52 reconsideration power fairly and properly, and within the three-year deadline (paragraphs 33 to 35).

[27] The Commission made a mistake and misled the Tribunal. The Commission argued it used its section 52 reconsideration power fairly and properly, within the 36-month deadline.²⁰ But the Commission doesn't use its section 52 reconsideration power when it allocates earnings from a settlement. It uses section 45 of the EI Act.

²⁰ See GD3-54 and GD4-5.

[28] Section 45 empowers the Commission to recover from a claimant an overpayment that results when it allocates settlement money.²¹ The law says the Commission has to do that.

[29] So the General Division had no legal authority to review how the Commission used its section 52 power. In other words, the General Division made a jurisdictional error. But the General Division's error doesn't give the Claimant's appeal a reasonable chance of success.

[30] Section 45 also has a time limit for the Commission to act. A claimant doesn't have to pay back the overpayment if 36 months has passed since their lay-off or separation from employment.²² The uncontradicted documentary evidence in the Claimant's appeal shows these two things. She separated from her employer in October of 2022.²³ The notice of debt is dated September 28, 2024—less than 36 months later.²⁴ This means the Commission acted within the time limit, so she has to pay back the overpayment.

[31] And this means I can't give the Claimant permission to appeal based on the General Division's jurisdictional error.

There isn't an arguable case the General Division made a legal error

[32] The Claimant argues the General Division erred in law and failed to address material questions.

[33] The General Division makes a legal error when it misinterprets a law, uses an incorrect legal test, or doesn't follow a court decision it has to follow.

²¹ See *Faullem v Canada (Attorney General)*, 2022 FCA 29 at paragraphs 77 to 100; citing the leading decision in *Chartier v Canada (Attorney General)*, 2010 FCA 150.

²² See section 46.01. A claimant can only get out of paying the overpayment if 36 months have passed **and** the Commission believes the administrative costs of determining the repayment would equal or exceed the amount of the repayment.

²³ See GD3-6, GD3-16, GD3-18, GD3-22

²⁴ See GD3-33.

[34] The Claimant's arguments don't show an arguable case the General Division made a legal error. I appreciate the Claimant has unanswered questions about her claim. They are certainly important to her. But the General Division didn't have to answer her questions. The General Division didn't have the jurisdiction to decide the core administrative and procedural issues she wanted it to address.

[35] I reviewed the General Division decision and the law. The General Division applied the correct law to decide the settlement money was earnings and the Commission correctly allocated these earnings (paragraphs 8, 9, 10, 17, and 19). The General Division also correctly stated only the Commission has the power to write off an overpayment (paragraph 36).

[36] This shows me there isn't an arguable case the General Division made a legal error.

About the Claimant's unanswered questions

[37] The Commission relied on section 45 of the EI Act to reopen her claim more than a year after she had been paid benefits. The law says it had to do that. The Commission explained this when it documented its reasons for refusing to write off her overpayment.²⁵

[38] The Commission didn't give the Claimant an "overpayment breakdown." And it didn't include it in the file it sent to the General Division. This breakdown usually shows

- a person's weekly benefits rate
- benefits the Commission paid
- allocation of earnings to weeks in a claim
- overpayment calculation, week-by-week, and a total amount

²⁵ See AD3-52.

[39] I can't order the Commission to send the Claimant an overpayment breakdown. But I can strongly encourage it to do so. This seems to be common sense, good client service, and promotes transparent and accountable decision-making. And it might help the Claimant better understand how the Commission used the law to decide her claim.

[40] The Service Canada website answers the Claimant's question about the number of weeks of benefits she is entitled to—in a general way.²⁶ She can use the unemployment rate tables for 2022 to find the rate that applies to her claim.²⁷ Then plug that rate into the "Number of weeks of EI regular benefits payable by regional rate of unemployment" chart on the Service Canada site. And find the number of weeks of benefits she was entitled to get in her claim using her insurable earnings from her record of employment.

[41] If the Claimant has a My Service Canada account, that can be an important source of information about her claims.

[42] Finally, if the Claimant wants to file a complaint about the services she received from the Commission, she can contact the Office for Client Satisfaction.²⁸

Conclusion

[43] The Claimant didn't show an arguable case the General Division made a procedural fairness error or a legal error. And I didn't find an arguable case of either type of error.

²⁶ Go to www.canada.ca/en/services/benefits/ei/ei-regular-benefit/benefit-amount.html.

²⁷ Go to https://srv129.services.gc.ca/ei_regions/eng/rates.aspx?id=2022#data.

²⁸ Go to www.canada.ca/en/employment-social-development/corporate/service-canada/client-satisfaction.html.

[44] I found the General Division made a jurisdictional error. But that error doesn't give the Claimant's appeal a reasonable chance of success.

[45] Because the Claimant's appeal doesn't have a reasonable chance of success, I can't give her permission to appeal.

Glenn Betteridge
Member, Appeal Division