



Citation: *JM v Canada Employment Insurance Commission*, 2025 SST 423

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: J. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated April 2, 2025
(GE-25-845)

Tribunal member: Glenn Betteridge

Decision date: April 25, 2025

File number: AD-25-284

Decision

[1] I am not giving J. M. leave (permission) to appeal the General Division decision.

[2] This means his appeal won't go forward and the General Division decision stands unchanged.

[3] I can't consider the workers' compensation benefit payment history J. M. sent with his application to appeal.¹ But the Canada Employment Insurance Commission should consider it. The payment history strongly suggests the Commission based its decision on incorrect information about his weekly workers' compensation benefits.

Overview

[4] J. M. is the Claimant. He wants permission to appeal a General Division decision. I can give him permission if his appeal has a reasonable chance of success.

[5] The General Division appeal was about his workers' compensation income replacement benefits (WCB). The law says the Commission has to deduct a portion of a person's weekly WCB from their Employment Insurance (EI) benefits for that week.² If the Commission deducts the WCB after it has already paid EI benefits, the person will have an EI overpayment.³

[6] The General Division decided three things. The Claimant's WCB benefits were earnings. The Commission allocated the correct amount of WCB (\$754) to the proper weeks in his EI claim. The Claimant has an overpayment, which only the Commission can erase.

¹ See AD1B.

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

³ See section 43 of the EI Act.

[7] The Claimant says the General Division process was unfair. He also says the General Division used incorrect WCB amounts, so the overpayment isn't correct. He sent his WCB payment history printout to support this argument.

[8] Unfortunately for the Claimant, I can't consider his WCB payment history because it is new evidence the General Division didn't have. And his appeal doesn't have a reasonable chance of success. So I can't give him permission to appeal.

Issue

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

I am not giving the Claimant permission to appeal

[10] I read the Claimant's application to appeal.⁴ I read the General Division decision. I reviewed the documents in the General Division file.⁵ And I listened to the hearing recording.⁶ Then I made my decision.

[11] 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 success⁷

[12] I can give the Claimant permission to appeal if his appeal has a reasonable chance of success.⁸ This means he has to show an **arguable ground of appeal** upon which his appeal **might succeed**.⁹

⁴ See AD1 and AD1B.

⁵ See GD2, GD3, and GD4.

⁶ The hearing lasted for about half an hour.

⁷ See *Paradis v Canada (Attorney General)*, 2016 FC 1282 at paragraph 32.

⁸ See section 58(2) of the *Department of Employment and Social Development Act* (DESD Act).

⁹ See *Osaj v Canada (Attorney General)*, 2016 FC 115.

[13] I can consider four grounds of appeal, which I call **errors**.¹⁰ 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)
- made a legal error
- made an important factual error

[14] The Claimant's reasons for appeal set out the key issues and central arguments I have to consider.¹¹ Because the Claimant is representing himself, I will also look beyond his arguments when I apply the permission to appeal test.¹²

No arguable case the General Division made a procedural fairness error

[15] The Claimant checked the box that says the General Division made a procedural fairness error.

[16] The General Division makes this error if it uses an unfair process.¹³ The question is whether the Claimant knew the case he had to meet, had a full and fair opportunity to present his case, and the General Division member was impartial.¹⁴

[17] But none of the Claimant's reasons for appeal are about these three things. This tells me he hasn't shown the General Division made a procedural fairness error.¹⁵

¹⁰ See section 58(1) of the DESD Act.

¹¹ See *Hazaparu v Canada (Attorney General)*, 2024 FC 928 at paragraph 13.

¹² 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.

¹³ This is a ground of appeal under section 58(1)(a) of the DESD Act.

¹⁴ See *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69; and *Kuk v Canada (Attorney General)*, 2024 FCA 74.

¹⁵ See *Twardowski v Canada (Attorney General)*, 2024 FC 1326 at paragraph 59.

[18] His reasons seem to say the General Division decision, or maybe the outcome of his appeal, is unfair because he didn't lie about his WCB. But simply disagreeing with the General Division's findings, or the outcome of the appeal, doesn't show an arguable case the General Division made an error.¹⁶

[19] I looked but didn't find an arguable case the General Division made a procedural fairness error. I read the decision, reviewed the documents, and listened to the hearing. The General Division gave the Claimant an opportunity to know the Commission's case. It gave him a full and fair opportunity to give evidence and make arguments. And nothing I read or heard suggested the General Division wasn't impartial.

[20] The Claimant's reasons for appeal are about incorrect facts. This falls under another type of error—an important factual error. I will look at that next.

There isn't an arguable case the General Division made an important factual error, based on the evidence it had

[21] 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.¹⁷ In other words, some evidence goes squarely against or doesn't support a factual finding the General Division made to reach its decision.

[22] Relevant evidence means evidence that plugs into the legal tests the General Division had to use to decide the appeal.

¹⁶ See *Griffin v Canada (Attorney General)*, 2016 FC 874 at paragraph 20.

¹⁷ 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.

– **What the Claimant says, and his WCB payment history**

[23] The Claimant believes the General Division used incorrect facts. He says WCB amounts from his Commission file are wrong. This caused the overpayment. And the overpayment amount is incorrect. He argues the General Division should have followed his WCB payment history, not the Commission's file.

[24] The Claimant sent in his payment history with his application to appeal the General Division decision. He didn't send it to the Commission when it decided his claim. And he didn't send it to the General Division. So, the General Division didn't have his WCB payment history.

[25] Unfortunately, I can't accept new evidence the General Division didn't have, unless it meets an exception to that rule.¹⁸ The payment history doesn't meet an exception. (See below where I write more about the payment history document and what I think the Commission should do.)

[26] Here is the evidence the General Division had. The Commission's file included a letter from the Alberta workers' compensation board.¹⁹ It says the Claimant got weekly WCB of \$754.32 in the weeks he got EI benefits. The Commission called the board and confirmed this amount.²⁰ The Claimant testified he got \$754.32 in weekly WCB.²¹

– **The General Division considered the relevant evidence and didn't misunderstand that evidence**

[27] The General Division considered the relevant evidence about the Claimant's weekly WCB (paragraphs 5, 6, 8, 9, 10, 11, 17, and 22). It considered the letter, the call, and his testimony. It found his weekly WCB was \$754.32. The General Division didn't ignore or misunderstand any relevant evidence when it made this finding.

¹⁸ See *Sibbald v Canada (Attorney General)*, 2022 FCA 157 at paragraphs 37 to 40.

¹⁹ See GD3-33 and GD3-34.

²⁰ See GD3-36.

²¹ Listen to the recording of the General Division hearing at 9:45 to 11:30.

[28] The General Division considered the evidence about the start and end dates of his WCB and weeks he was getting EI benefits (paragraphs 8, 9 and 22). It found the Commission correctly allocated his WCB for the weeks from March 17 to July 13, 2024 (paragraph 13). The General Division didn't ignore or misunderstand any relevant evidence when it made this finding.

[29] This means the General Division didn't make an important factual error when it considered and weighed the relevant evidence.

The Claimant didn't challenge the calculation of the overpayment at the General Division, but the Commission's evidence adds up

[30] The Claimant is now arguing the Commission got the overpayment amount wrong. He says it's based on incorrect information about his WCB.

[31] The General Division didn't decide whether the Commission correctly calculated his overpayment. But it didn't have to. The Claimant didn't argue the amount of the overpayment was wrong. He argued someone made a mistake, and there should be no overpayment.²²

[32] The General Division had to decide the **earnings issue** and the **allocation issue** (paragraphs 12 and 13). And it did that. It decided the Commission's decision was correct. In other words, the Commission allocated the correct amount of earnings (**\$754**) to the correct weeks in his claim (**March 17 to July 13, 2024**). The overpayment calculation flows directly from these two facts, and the law that says the Commission had to deduct 50% of his weekly WCB from his weekly EI benefit.²³

[33] The Commission sent the General Division an overpayment breakdown worksheet.²⁴ I reviewed the Commission's worksheet and the law it had to use to calculate his overpayment. The Commission's calculations add up. The worksheet

²² See GD2-5.

²³ See section 19(2) of the EI Act.

²⁴ See GD3-54.

shows the total overpayment for March 17 to July 13, 2024 was \$3,712. This is the “total balance” amount on the notice of debt the Commission sent the Claimant.²⁵

The Commission should now consider the Claimant’s WCB payment history

[34] Section 111 of the *Employment Insurance Act* lets the Commission cancel or amend a decision because of new facts or if it based the decision on a mistake about an important fact.

[35] I don’t have the power to order the Commission to consider the Claimant’s WCB payment history. But I urge the Commission to do that. The Tribunal sent a copy of the payment history to the Commission.

[36] I reviewed the payment history. It seems to contradict the weekly WCB amount from the workers’ compensation board letter. And it seems to contradict what the board told the Commission during a telephone call.

[37] The payment history seems to show in many weeks the Claimant received roughly half the WCB the Commission allocated to that week in his EI claim. For example, the payment history shows he received \$578 in WCB for the **14 days** between March 16 and March 29, 2024.²⁶ And the same amount for the **14 days** between May 8 and May 21, 2024.²⁷ This works out to **\$289 per week**—not the \$574 the Commission allocated to each week.

[38] So, it seems the Claimant’s payment history presents new facts the Commission didn’t have when it made its decision. And these facts seem to show the Commission based its decision on a mistake about his weekly WCB amount. If this is true, the Commission can use the correct information from the WCB payment history to fix its allocation and overpayment decisions—so its decisions follow the law.

²⁵ See GD3-40.

²⁶ See AD1B-6.

²⁷ See AD1B-6.

Conclusion

[39] The Claimant hasn't shown an arguable case the General Division made an error that might change the outcome in his appeal. And I didn't find an arguable case.

[40] This tells me his appeal doesn't have a reasonable chance of success. So I can't give him permission to appeal.

[41] I urge the Commission to review the Claimant's WCB payment history to make sure its allocation and overpayment decisions follow the law. The Claimant should contact the Commission (Service Canada) to follow up on this.

Glenn Betteridge
Member, Appeal Division