



Citation: *CE v Canada Employment Insurance Commission*, 2025 SST 476

Social Security Tribunal of Canada Appeal Division

Decision

Appellant:

C. E.

Respondent:

Canada Employment Insurance Commission

Representative:

Stephanie Tollefson

Decision under appeal:

General Division decision dated February 7, 2025
(GE-25-118)

Tribunal member:

Glenn Betteridge

Type of hearing:

In Writing

Decision date:

May 7, 2025

File number:

AD-25-174

Decision

[1] I am allowing C. E.'s appeal.

[2] The Canada Employment Insurance Commission says the General Division made a procedural fairness error. I agree.

[3] I am sending the case back to the General Division to be reconsidered by a different member.

Background

[4] C. E. is the Claimant. Her employer let her go and paid her severance, bonus, and vacation pay.

[5] She renewed an existing claim for EI regular benefits.

[6] The Commission decided some of the money she received from her employer counted as earnings. It allocated and deducted these earnings from EI benefits she would have been entitled to get during the remaining weeks in her renewal claim. This meant she didn't get EI benefits in those weeks.

[7] Later on, the Claimant asked the Commission to end her renewal claim and start a new one.¹ The Commission established her new claim effective November 24, 2024. It allocated and deducted the balance of her earnings from weeks in her new claim, at a higher rate. This meant she wasn't eligible for benefits until after the week ending April 12, 2025.

[8] The General Division wasn't clear about how the Commission managed the claim and the Commission's decisions. It twice asked the Commission for more information. The Commission didn't respond to the second request. Despite this, the General Division went ahead with the hearing. Then decided the appeal.

¹ The Commission can do this under section 10(8)(d) of the *Employment Insurance Act* (EI Act).

[9] The General Division dismissed her appeal. The General Division found the Commission should have extended her renewal claim. So it used the Claimant's average weekly earnings from her renewal claim to allocate the balance of her earnings. This increased the number of weeks she could not get benefits, to the end of the week of June 29, 2025.

[10] The Commission has conceded the General Division process was unfair to the Claimant. I accept the Commission's concession. And I am sending the Claimant's case back to the General Division to be reconsidered.

Analysis

The law I considered

[11] I can step in and fix a General Division decision if the Commission shows the General Division made an error.² I can consider four types of errors: error of jurisdiction, error of law, important factual error, and procedural unfairness.³

[12] The law about earnings and allocation is complicated. It can involve many decisions and calculations. This law often comes into play when someone leaves a job, and their employer pays them severance and other payouts.

[13] The law says the Commission has to deduct a portion of a person's earnings in a week from their EI benefits for that week.⁴ To do that the Commission has to:

- decide what money counts as earnings and calculate the amount of those earnings
- calculate the person's average weekly earnings
- decide the week(s) the earnings should be allocated to

² See section 59(1) of the *Department of Employment and Social Development Act* (DESD Act).

³ See section 58(1) of DESD Act.

⁴ See section 19 of the EI Act.

- decide how much earnings to allocate to each week⁵

The General Division used an unfair procedure

[14] The Commission conceded the General Division made a procedural fairness error. I accept the Commission's concession, for the reasons that follow.

[15] The General Division had a duty to use a fair procedure (in other words process) when it heard and decided the Claimant's appeal. This means the General Division had to make sure the Claimant

- knew the Commission's case
- had a full and fair opportunity to respond by giving evidence and making arguments
- had an impartial member consider and decide her appeal⁶

[16] The General Division didn't do enough to ensure the Claimant knew the Commission's case.

[17] This wasn't entirely the General Division's fault. When the General Division asked for more information, the Commission's response wasn't detailed or supported by documents. So the General Division made a second request. The Commission didn't respond. And as the Commission now acknowledges, it never sent the Claimant or the General Division its initial decision in her new claim.⁷ And it didn't explain in its written argument how it allocated her earnings in her new claim.⁸

[18] The General Division pointed out why not having all the relevant information from the Commission was a problem (paragraphs 58 and 59).

⁵ See sections 35 and 36 of the *Employment Insurance Regulations*.

⁶ See *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69; and *Kuk v Canada (Attorney General)*, 2024 FCA 74.

⁷ See AD10-5.

⁸ See AD10-5.

It may very well have been in the Appellant's best interests to start her subsequent, November 24, 2024, benefit period on this date, or earlier, or to extend her November 26, 2023, benefit period further. But without access to the requested information, this can't be determined by the Tribunal at this time.

The Commission's failure or refusal to provide the Tribunal with the requested information, or to notify the Appellant of decisions made relating to a benefit period extension, is not only reprehensible but is a breach of procedural fairness and inhibits the Tribunal's ability to resolve all related issues under appeal as simply and quickly as fairness allows.

[19] With respect, the General Division—not the Commission—owed the Claimant a duty of procedural fairness in her appeal. And when the General Division decides appeals, using a fair process is more important than arriving at a simple and quick outcome.

[20] The General Division has to actively adjudicate appeals.⁹ This means it can decide what issues need to be addressed and provide information about the laws it has to apply. The General Division's decision shows me it didn't fully understand the decisions the Commission made. So how could it expect the Claimant to know the Commission's case? And how could it explain the Commission's case to the Claimant?

[21] The General Division wasn't able to do that. This meant the Claimant wasn't able to participate fully in her appeal. So the General Division should not have gone ahead with the hearing.

[22] To summarize, the General Division used an unfair process.

[23] Because the General Division made an error, I can step in and fix it.

Fixing the error by sending the case back to the General Division

[24] I am sending the Claimant's case back to the General Division to be reconsidered by a different General Division member. This is usually the most

⁹ See section 17 of the *Social Security Tribunal Rules of Procedure*.

appropriate remedy where the General Division used an unfair process. The Claimant will now have the chance to meaningfully participate in her appeal.¹⁰

[25] The General Division should give the Claimant and the Commission the opportunity to send in new evidence and make new arguments. I strongly encourage the Commission to send the General Division a complete reconsideration file—with all the relevant decision letters, file notes, and a breakdown of the earnings allocations and deductions for both claims.

[26] Finally, I want to let the General Division know the Claimant sent new evidence to the Appeal Division.¹¹ And based on that new evidence, the Commission says it needs to clarify some facts with the employer.¹²

Conclusion

[27] I am allowing the Claimant's appeal because the General Division process was unfair to the Claimant.

[28] To fix that error, I am sending the Claimant's case back to the General Division to be reconsidered by a different member.

Glenn Betteridge
Member, Appeal Division

¹⁰ The Commission makes this point in AD13.

¹¹ See AD12.

¹² See AD13.