



Citation: *JK v Canada Employment Insurance Commission*, 2025 SST 781

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: J. K.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated June 2, 2025
(GE-25-1103)

Tribunal member: Elsa Kelly-Rhéaume

Decision date: July 29, 2025

File number: AD-25-462

Decision

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

Overview

[2] J. K. is the Claimant. She applied for Employment Insurance (EI) benefits and received benefits in 2021.

[3] On August 4, 2023, the Canada Employment Insurance Commission (Commission) informed the Claimant that she had not declared any earnings between March 28, 2021, and October 17, 2021, but had in fact received earnings during this period. The Commission informed the Claimant that she would have to repay any benefits she should not have received.¹

[4] On August 5, 2023, the Commission sent the Claimant a notice of debt in the amount of \$16,485.² The Claimant called the Commission and told them she had not received the August 4, 2023, decision. The Commission issued a copy of the decision on October 20, 2023, which the Claimant confirmed receiving.³

[5] On February 3, 2025, the Claimant asked the Commission to reconsider its decision.

[6] Because the Claimant had not asked it to reconsider within 30 days, the Commission decided that it would not reconsider its decision, since the Claimant did not have a valid reason for the delay and had not proven a continuing intention to request reconsideration.⁴

¹ See GD3-29.

² See GD3-31.

³ See GD3-39.

⁴ See GD3-44.

[7] The Claimant then appealed the Commission's refusal to reconsider its decision to the General Division. The General Division dismissed her appeal, deciding that the Commission had acted judicially in making its decision.

[8] The Claimant now wants to appeal the General Division's decision to the Appeal Division.

Issues

- a) Is there an arguable case that the General Division made an important error of fact by ignoring the Claimant's financial hardship?
- b) Is there an arguable case that the General Division did not respect the principles of procedural fairness by failing to provide adequate reasons?
- c) Is there an arguable case that the General Division made a reviewable error by not discussing repayment options?

Preliminary matters

[9] The Claimant filed her Application to the Appeal Division.⁵ In her form, the reasons for her appeal appeared incomplete.

[10] The Appeal Division wrote the Claimant to ask her to elaborate on her grounds of appeal.

[11] She then responded with an updated Application to the Appeal Division within the allowed timeframe.⁶ I have relied on this second application to determine the outcome of the permission to appeal application.

⁵ See AD1-3.

⁶ See AD1B-3.

I am not giving the Claimant permission to appeal

[12] The Claimant has not shown that her appeal has a reasonable chance of success based on one of the grounds of appeal that would allow me to intervene.

[13] The Appeal Division can only intervene if the General Division has:

- 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 fact⁷

[14] The law says that I must refuse permission to appeal if I am satisfied that the appeal has no reasonable chance of success.⁸ A reasonable chance of success means that the Claimant has an arguable case.⁹

There is no arguable case that the General Division made an important error of fact by failing to consider the Claimant's financial hardship

[15] The Claimant says the General Division failed to properly consider her claim of financial hardship, despite the serious consequences of full repayment. She characterizes this error as one of procedural fairness. But if the General Division ignored a relevant fact, such as the Claimant's financial hardship, this could qualify as an important error of fact. In this case, there is no arguable case that the General Division made this kind of error of fact.

[16] In its decision, the General Division considered that the Claimant "had encountered serious financial difficulties during this period."¹⁰ It also wrote that the Commission acknowledged in its submissions to the General Division that the Claimant

⁷ Section 58(1) of the *Department of Employment and Social Development Act*.

⁸ Section 58(2) of the *Department of Employment and Social Development Act*.

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

¹⁰ See AD1A-6 at paragraphs 40-42.

had encountered financial and health obstacles from October 2023 to November 2024, but that those obstacles did not justify the delay of more than 400 days.¹¹

[17] The courts have taught us there is a high threshold for the Appeal Division to intervene in the General Division's factual findings.¹² The Appeal Division is limited to identifying factual findings that are "unreasonably detached from the evidentiary record."¹³

[18] I have described the ways in which the General Division explicitly considered the Claimant's financial hardship. Therefore, the Claimant has not shown that the General Division made an important error of fact because it did consider her financial hardship. It is not up to the Appeal Division to re-weigh the evidence that the General Division has appropriately taken into account.

There is no arguable case that the General Division did not respect procedural fairness by failing to provide adequate reasons

[19] In her Application to the Appeal Division, the Claimant argues that the General Division did not follow procedural fairness. The Claimant argues that the General Division did not follow the principles established in *Baker*, *Cardinal*, and *Vavilov*.¹⁴ She says that the case law requires that fairness entails meaningful engagement with the issues raised.

[20] She also says that the decision lacks proper reasoning in relation to her circumstances. She alleges that this failure has resulted in undue hardship and has violated her right to a fair and just hearing.

¹¹ See AD1A-8 at paragraph 49.

¹² See *Ponomarov v Canada (Attorney General)*, 2025 FC 328.

¹³ See *Ponomarov v Canada (Attorney General)*, 2025 FC 328, at paragraph 28.

¹⁴ See *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817; *Cardinal v Director of Kent Institution*, [1985] 2 S.C.R. 643; and *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.

[21] The Supreme Court, in *Baker and Vavilov*, highlighted the importance of reasons, saying “Reasons explain how and why a decision was made.”¹⁵ The requirement for reasons is that they be transparent, justified and intelligible. The reader must understand the decision-maker’s logic in analyzing the law, the facts, and connecting them to the outcome of the decision.

[22] The General Division’s decision is written in a way that allows me to understand how it came to its decision.

[23] First, the General Division set out the legal test for examining a Commission’s decision not to allow an extension of time to request a reconsideration, at paragraphs 17 to 23.¹⁶

[24] The General Division explained that four requirements must be met for the Commission to grant an extension of time when a request has been presented more than 365 days after the Commission’s decision. These four requirements are set out in the *Reconsideration Regulations*.¹⁷ Because the Commission found that the first two requirements were not met (the Claimant had not provided a reasonable explanation for requesting a longer period of time and had not demonstrated a continuing intention to request a reconsideration), it did not continue its analysis beyond those two requirements.

[25] The General Division not only reviewed the applicable law but also listed in detail all the factors the Commission considered in its decision-making process. The General Division considered the following:

- The Claimant contacted her tax preparer in October 2023 and followed up with him until March 2024.

¹⁵ See *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, at paragraph 79.

¹⁶ See AD1A-4.

¹⁷ Sections 1(1) and (2)(a) of the *Reconsideration Regulations*.

- The Claimant had problems accessing her Service Canada file because of an error in her date of birth, which was corrected on January 19, 2023.
- The Claimant had serious financial difficulties during this period, including going into debt paying for a condo that she had to sell in July 2024.
- The Claimant had difficult personal problems, namely the end of an engagement, the loss of a job in March 2025, a move, and a traumatic miscarriage.¹⁸

[26] The General Division here clearly demonstrated that it grappled with the Claimant's personal circumstances, in particular her financial difficulties.

[27] The law says that the Commission's decision to grant an extension of time is purely discretionary and cannot be reviewed.¹⁹ The General Division can only look at whether the Commission acted judicially in deciding it could not allow an extension of time for the Claimant to request a reconsideration. The Courts have said that a Commission's decision cannot be changed if it exercised its discretion in a judicial manner.²⁰

[28] The General Division identified what could constitute a failure to act judicially. In other words, if the Commission:

- acted in bad faith
- acted for an improper purpose or motive
- considered an irrelevant factor or ignored a relevant factor
- acted in a discriminatory manner.²¹

¹⁸ See AD1A-6 at paragraphs 36-49.

¹⁹ See section 112.1 of the *Employment Insurance Act*.

²⁰ See *Canada (Attorney General) v Uppal*, 2008 FCA 388.

²¹ See AD1A-4 at paragraph 22.

[29] The General Division concluded that nothing in the evidence showed that “the Commission considered irrelevant information, that it failed to consider relevant information, that it acted in a discriminatory manner, in bad faith or for an improper purpose.”²²

[30] Considering the lengths the General Division went to in order to explain its decision and the reasons why it dismissed the Claimant’s appeal, I cannot find that the appeal has a reasonable chance of success on the basis that the General Division did not provide adequate reasons or engage with the issues.

There is no arguable case that the General Division made a reviewable error in not discussing alternative repayment options

[31] The Claimant also argues that she was not offered or informed of alternative repayment options such as a payment plan.

[32] While it is true that the General Division does not discuss repayment options in its decision, this does not constitute an error of procedural fairness or jurisdiction, of law or of fact.

[33] The Claimant does not dispute that she owes money to repay the EI benefits she received. She said so in her appeal to the General Division.²³ Her only request was to have the interests on the capital amount owed waived or significantly reduced.

[34] The General Division does not have any jurisdiction over writing off overpayments (known as write-offs), nor does the Appeal Division. The law clearly states that a decision on writing off an amount payable or interest accrued is not subject to review.²⁴

[35] Only the Commission or the Canada Revenue Agency (CRA) (in its role of collector on behalf of Employment and Social Development Canada) can use their

²² See AD1A-8 at paragraph 55.

²³ See GD2-10.

²⁴ See section 112.1 of the *Employment Insurance Act*.

discretionary power to decide if it will write off a claimant's overpayment. The Claimant may contact the CRA to ask for a write-off, since she is saying that repayment would result in undue hardship. It will be up to the CRA to decide the outcome of that request.

[36] Because the General Division had no power to consider writing off any overpayment or interest the Claimant owed, I cannot find an arguable case that its failure to discuss payment arrangements constitutes an error of procedural fairness. I cannot ask the General Division to act beyond its jurisdiction.

[37] In addition, I note that the Claimant was informed of the possibility of discussing repayment options as early as 2023 when the Commission wrote the following in its October 20, 2023, decision:

You will soon receive a notice of debt and repayment instructions. Interest is charged on debts arising from false declarations. If repaying the overpayment is causing you financial hardship, contact the Canada Revenue Agency at the telephone number listed on the notice of debt.²⁵

[38] Also, the statement of accounts dated September 29, 2023, pointed out that it was possible to make a payment arrangement with the CRA:

REPAYMENT

Your debt is due and payable in full upon receipt of this notice. Payments with conditions will be accepted as partial payment only and not in full satisfaction of the debt. Please contact the number indicated on this statement to discuss a payment arrangement. If you are receiving benefits, they may be deducted to recover the total amount of your debt(s).

TO MAKE A PAYMENT ARRANGEMENT

POUR EFFECTUER UNE ENTENTE DE PAIEMENT

English/Anglais: 1(866) 864-5823

Français/French: 1(866) 864-5824.²⁶

²⁵ See GD3-41.

²⁶ See GD3-35.

There is no arguable case that the General Division made any other reviewable error

[39] I have reviewed the documents in the record, the General Division decision, and listened to the General Division hearing recording. I have found no other potential reviewable error.²⁷

Conclusion

[40] Permission to appeal is refused. This means that the appeal will not proceed.

Elsa Kelly-Rhéaume
Member, Appeal Division

²⁷ See *Karadeolian v Canada (Attorney General)*, 2016 FC 615.