



Citation: *MN v Canada Employment Insurance Commission*, 2025 SST 770

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

**Applicant:** M. N.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated May 20, 2025  
(GE-25-1311)

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**Tribunal member:** Glenn Betteridge

**Decision date:** July 30, 2025

**File number:** AD-25-448

## Decision

[1] Leave (permission) to appeal is refused.

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

## Overview

[3] M. N. is the Claimant. She wants permission to appeal a General Division decision. I can give her permission if she has a reasonable chance of winning her appeal.

[4] Money an employer pays a person when their job ends counts as earnings.<sup>1</sup> The Canada Employment Insurance Commission has to allocate these earnings to weeks, starting with the week their job ended.<sup>2</sup> If those weeks fall in the person's EI benefit period, the Commission has to deduct a portion of the earnings from their benefits in those weeks.<sup>3</sup> This means the person won't get EI benefits in those weeks.

[5] The General Division dismissed the Claimant's appeal. It decided the Claimant received \$6315 in vacation pay when her job ended. This counted as earnings. And the Commission correctly allocated and deducted her earnings.

[6] The Claimant argues the General Division didn't follow procedural fairness. She says it's not fair she didn't get all the benefits she thought she would get.

[7] There's an arguable case the General Division made a legal error in its analysis. But even if the General Division made that error, it doesn't give her a reasonable chance of winning her appeal.

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<sup>1</sup> See section 35(2) of the *Employment Insurance Regulations* (EI Regulations).

<sup>2</sup> See section 36(9) of the EI Regulations.

<sup>3</sup> See section 19 of the *Employment Insurance Act* (EI Act).

## 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.<sup>4</sup> I read the General Division decision. I reviewed the documents in the General Division file.<sup>5</sup> Then I made my decision.

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

## The permission to appeal test screens out appeals without a reasonable chance of success<sup>6</sup>

[11] To get permission to appeal, the Claimant has to show an **arguable case the General Division made an error** upon which her appeal **might succeed**.<sup>7</sup>

[12] The law lets me consider **four types of errors**.<sup>8</sup> The General Division used an unfair procedure, or made a jurisdictional error, a legal error, or an important factual error.

## No arguable case the General Division process was unfair to the Claimant

[13] The Claimant argues the General Division didn't follow procedural fairness. She writes:

I decided to go to take care of my 88 years old sick father-in-law who lives by himself (as my brother-in-law passed away in Covid-19) after talking to Service Canada in detail and it was promised and informed to give me a full family caregiver benefit and I am not even claiming for the full benefit. On that basis I had booked the tickets.

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<sup>4</sup> See AD1 and AD1B.

<sup>5</sup> See GD2, GD3, GD4, GD5, and GD6.

<sup>6</sup> See section 58(2) of the *Department of Employment and Social Development Act* (DESD Act); and *Paradis v Canada (Attorney General)*, 2016 FC 1282 at paragraph 32.

<sup>7</sup> See *Osaj v Canada (Attorney General)*, 2016 FC 11.

<sup>8</sup> See section 58(1) of the DESD Act.

Unfortunately and unexpectedly I got laid off after I left Canada on 2024-11-29. I got vacation pay because I worked 9 hours everyday to accumulate vacation days which was paid as I was laid off. I have contributed to EI for many years and when I need it the most, you should consider as per the above explanation.

It is not fair to me not paying the benefit when it is needed the most. My husband and I both were laid off and right now we are jobless. How can we manage our expenses?

If Service Canada would have informed me that I might not get the benefit, I would have not planned the trip to take care of my father-in-law.

[14] The General Division had to use a fair **process** to decide the Claimant's appeal.<sup>9</sup> This is called procedural fairness or natural justice. The General Division had to

- let the Claimant know the Commission's case
- give the Claimant a full and fair opportunity to respond to that case with evidence and arguments
- be impartial (in other words, not prejudiced or biased)<sup>10</sup>

[15] The Claimant's reasons don't show an arguable case the General Division **process** was unfair to her. The Claimant is really arguing the **outcome**—not getting benefits for weeks—is unfair. Unfortunately, this isn't an error the law lets me consider. 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.<sup>11</sup>

[16] So the Claimant hasn't shown an arguable case the General Division used an unfair process.

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<sup>9</sup> This is a ground of appeal under section 58(1)(a) of the DESD Act.

<sup>10</sup> See *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69; and *Kuk v Canada (Attorney General)*, 2024 FCA 74.

<sup>11</sup> See *Griffin v Canada (Attorney General)*, 2016 FC 874 at paragraph 20.

## **No arguable case the General Division made an error that gives the Claimant a reasonable chance of winning**

[17] I didn't find an arguable case the General Division made a **jurisdictional error**. Jurisdiction means the tribunal's power to decide a legal issue. The General Division correctly identified the two legal issues—earnings and allocation—it had to decide (see paragraph 7 of the decision). Then it decided only those issues.

[18] I didn't find an arguable case the General Division made an **important factual error**. The parties agreed the money the Claimant got when her job ended was vacation pay. They agreed on the amount, and her last day of work. The General Division didn't ignore relevant evidence.

[19] There's an arguable case the General Division made a **legal error**. The General Division seems to ignore or misunderstand part of the EI Act. Under the EI Act, a week starts on Sunday.<sup>12</sup> The General Division used Monday. So the start dates and weeks the General Division wrote in its decision don't line up with the weeks the Commission used.<sup>13</sup>

[20] But even if the General Division misunderstood the EI Act, this makes no difference to the outcome. The General Division confirmed the Commission allocated the earnings correctly—for five weeks, in the correct amount (paragraphs 1, 24 and 26). So it dismissed the Claimant's appeal. And the relevant evidence supports that decision. This tells me the General Division's possible legal error doesn't give the Claimant a reasonable chance of winning her appeal.

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<sup>12</sup> See the EI Act section 2 definition of "week."

<sup>13</sup> In paragraph 33, the General Division used December 2, December 28, and January 5. In its written arguments at GD6-1, the Commission says it allocated the Claimant's earnings, "from December 1, 2024 to December 28, 2024 at average weekly earnings of \$1319 with a balance of \$960 allocated in the week ending January 4, 2025 (GD3-23)." The Commission says the same thing at GD4-2.

## **Conclusion**

[21] The Claimant's appeal doesn't have a reasonable chance of success. So I can't give her permission to appeal the General Division decision.

[22] I know the outcome may seem unfair to the Claimant. Unfortunately, the General Division and Appeal Division have to apply the law. The Tribunal can't decide EI appeals based on general principles of fairness or financial need. The General Division made these points in more detail in its decision (paragraphs 27 to 30).

Glenn Betteridge  
Member, Appeal Division