



Citation: *Canada Employment Insurance Commission v AC*, 2025 SST 806

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Canada Employment Insurance Commission
Representative: Nikkia Janssen

Respondent: A. C.

Decision under appeal: General Division decision dated April 3, 2025
(GE-24-3744)

Tribunal member: Solange Losier

Type of hearing: Videoconference

Hearing date: June 24, 2025

Hearing participants: Appellant's representative
Respondent

Decision date: August 5, 2025

File number: AD-25-287

Decision

[1] The Canada Employment Insurance Commission (Commission's) appeal is allowed. The General Division made errors of jurisdiction. The matter will return to the General Division for reconsideration.

Overview

[2] A. C. is the Claimant. She applied for Employment Insurance benefits when she stopped working. A benefit period was established effective and antedated to March 26, 2023.

[3] The Commission received an amended record of employment showing that the Claimant got severance pay from her employer.¹ After reviewing her pay stubs, it noted that she had also received vacation pay.² It concluded that the Claimant had received earnings that needed to be allocated to her claim. This resulted in a notice of debt for the overpayment.³

[4] The General Division allowed the Claimant's appeal. It found that the Commission hadn't exercised its discretion in a judicial manner when it reconsidered the claim. It substituted with its own decision and decided that the claim should not be reconsidered.⁴

[5] The Commission appealed to the Appeal Division and argued that the General Division made errors of jurisdiction and errors of law.⁵

[6] I have found that the General Division made errors of jurisdiction, so I am returning the matter for reconsideration.

¹ See page GD3-17.

² See pages GD3-21 to GD3-23 and GD3-25.

³ See page GD3-31.

⁴ See General Division decision at pages AD1-10 to AD1-15.

⁵ See Application to the Appeal Division at pages AD1-1 to AD1-15.

Preliminary matters

The Claimant got additional time after the hearing to submit written arguments

[7] At the Appeal Division hearing, the Claimant said that she didn't have an opportunity to review all of the file documents, including the Commission's written arguments. Because of that, she explained that she wasn't fully prepared to respond to some of the Commission's arguments at the hearing.

[8] I asked the Claimant whether she received all of the documents, including the Commission's arguments in advance of the hearing. The Claimant confirmed that she got all of the documents but said that her son didn't fully translate them to her.

[9] In the interest of fairness, I gave the Claimant some additional time after the Appeal Division hearing to review the file documents and the Commission's written arguments and to provide any written arguments in response. The Claimant told me that she would find someone to assist her with translation and the preparation of her written arguments.

[10] The Commission didn't object to the Claimant providing written arguments after the hearing but asked for an opportunity to reply.

[11] I sent the Claimant a letter after the hearing outlining the instructions as discussed at the hearing. The deadline for the Claimant to provide any post-hearing written arguments was July 8, 2025.⁶ I also asked the Commission to provide a reply by July 16, 2025.

[12] The parties replied by the deadlines set out and their arguments were shared with each other.⁷

⁶ See Tribunal letter at pages AD4-1 to AD4-3.

⁷ See Claimant's arguments at pages AD5-1 to AD5-4 and Commission's reply at page AD6-1.

Issues

[13] The issues in this appeal are:

- a) Did the General Division make any errors of jurisdiction or errors of law?
- b) If so, how should the error or errors be fixed?

Analysis

[14] An error of jurisdiction means that the General Division didn't decide an issue it had to decide or decided an issue it did not have the authority to decide.⁸

[15] An error of law can happen when the General Division doesn't apply the correct law or when it uses the correct law but misunderstands what it means or how to apply it.⁹

[16] Any of these types of errors would allow me to intervene in the General Division decision.¹⁰

The General Division made an error of jurisdiction because it didn't deal with the late appeal issue

[17] The Commission argues that the General Division made an error of jurisdiction because it had to first determine if the Claimant's appeal was filed late.¹¹

[18] The Claimant argues that the General Division didn't make any errors. She also adds that she wasn't told about the late appeal issue, and it wasn't raised at the General Division hearing. In any event, she submits that her appeal to the General Division was not late.

⁸ See section 58(1)(a) of the *Department of Employment and Social Development Act* (DESD Act).

⁹ See section 58(1)(b) of the DESD Act.

¹⁰ See section 59(1) of the DESD Act.

¹¹ See page AD3-7.

[19] The file shows that the Commission made **two separate decisions** under section 112 of the *Employment Insurance Act* (this is called a “reconsideration decision”):

- reconsideration decision dated **November 21, 2023**, on the issue of “**earnings**”¹²
- reconsideration decision dated **October 17, 2024**, on the issue of “**extension of benefit period.**”¹³

[20] The file also shows that the Tribunal received the Claimant’s appeal to the General Division on November 9, 2024.¹⁴

[21] The General Division’s jurisdiction comes from a reconsideration decision that is appealed to the Tribunal.¹⁵ The law says that an appeal of a decision must be brought to the General Division in the prescribed form and manner and within, 30 days after the day on which it is communicated to a person.¹⁶

[22] The General Division can allow further time, but in no case may an appeal be brought more than one year after the day on which the reconsideration decision is communicated to that person.¹⁷

[23] In its decision, the General Division didn’t address the late appeal issue or make any findings about whether the Claimant’s appeal was filed late.

[24] I find that the General Division failed to exercise its jurisdiction because it didn’t deal with an issue it was supposed to deal with. It needed to decide the late appeal issue *before* deciding whether the Commission had exercised its discretion in a judicial manner when it reconsidered the claim.¹⁸

¹² See pages GD3-39 to GD3-40.

¹³ See pages GD3-76 to GD3-77.

¹⁴ See pages GD2-1 to GD2-10.

¹⁵ See section 113 of the *Employment Insurance Act* (EI Act).

¹⁶ See section 52(1)(a) of the DESD Act.

¹⁷ See section 52(2) of the DESD Act and section 27 of the *Social Security Tribunal Rules of Procedure*.

¹⁸ See section 58(1)(a) of the DESD Act.

The General Division made an error of jurisdiction because it didn't deal with the extension of benefit period issue

[25] The Commission argues that the General Division made another error of jurisdiction because it didn't make any decision about the extension of benefit period issue, yet it was appealed.¹⁹

[26] The Claimant restates that the General Division didn't make any errors in its decision.

[27] I find that the General Division failed to exercise its jurisdiction and decide the extension of the benefit period issue.²⁰ That was a reconsideration decision that was appealed to the Tribunal, so the General Division was supposed to deal with it.²¹

The Commission made other arguments about other reviewable errors

[28] The Commission pointed out that the General Division decision appears to be incomplete.²² I agree with the Commission. In the "overview" section of its decision, the relevant facts were not inserted by the General Division.²³

[29] The Commission also made other arguments about other legal and jurisdictional errors, but it isn't necessary for me to review them because I've already found two errors that allow me to intervene.²⁴

Fixing the error

[30] There are two options for fixing an error made by the General Division. I can either send the file back to the General Division for reconsideration or give the decision that the General Division should have given.²⁵

¹⁹ See pages AD6-1.

²⁰ See section 58(1)(a) of the DESD Act.

²¹ See pages GD3-76 to GD3-77; GD2-4 and section 113 of the EI Act.

²² See page AD1-9.

²³ See paragraphs 3–7 of the General Division decision.

²⁴ See page AD3-1 to AD3-9 and AD6-1.

²⁵ See section 59(1) of the DESD Act.

[31] If the parties have had a full and fair opportunity to present their evidence before the General Division, then it would normally be appropriate to give the decision based on the record before the General Division. However, if the record was incomplete in some way, then it would be appropriate to refer the matter back to the General Division for reconsideration.

[32] The Commission submits that the Appeal Division should rescind the General Division's decision and refer the matter back to the General Division for reconsideration.²⁶ The Claimant indicated no preference for either option.

[33] I find that this matter should go back to the General Division for reconsideration. The record is incomplete. The Appeal Division can't accept new evidence, but for limited exceptions.²⁷ The Claimant didn't get an opportunity to make arguments on the late appeal issue and the extension of the benefit period issue to the General Division. She ought to have an opportunity to do so.

[34] If the General Division deems appropriate, it might consider scheduling a case conference with the parties (and an interpreter) to discuss and set out the relevant issues under appeal.²⁸

Conclusion

[35] The Commission's appeal is allowed. The General Division made errors of jurisdiction because it didn't deal with the late appeal issue and the extension of benefit period issue. The matter will return to the General Division for reconsideration.

Solange Losier
Member, Appeal Division

²⁶ See page AD3-9.

²⁷ See *Sharma v Canada (Attorney General)*, 2018 FCA 48; and *Sibbald v Canada (Attorney General)*, 2022 FCA 157.

²⁸ See reconsideration decision dated November 21, 2023, at pages GD3-39 to GD3-40 and reconsideration decision dated October 17, 2024, at pages GD3-76 to GD3-77.