



Citation: *Canada Employment Insurance Commission v SA*, 2025 SST 1330

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Canada Employment Insurance Commission
Representative: Nikkia Janssen

Respondent: S. A.

Decision under appeal: General Division decision dated June 25, 2025
(GE-25-1621)

Tribunal member: Solange Losier

Type of hearing: Videoconference

Hearing date: September 18, 2025

Hearing participants: Appellant's representative
Respondent

Decision date: December 12, 2025

File number: AD-25-485

Decision

[1] The Canada Employment Insurance Commission's appeal is allowed. The General Division made legal errors and didn't follow a fair process. The file will go back to the General Division for reconsideration.

Overview

[2] S. A. applied for Employment Insurance regular benefits, and a benefit period was established effective July 7, 2024.¹

[3] On April 24, 2025, the Commission retroactively decided that she had received earnings and allocated them to her claim.² This resulted in an overpayment of \$1,202.00.³ Following that, the Claimant repaid the overpayment and then appealed the Commission's decision to the General Division of the Tribunal.

[4] The General Division allowed her appeal. It decided that she got earnings that had to be allocated to her claim. It also found that the Commission hadn't acted in a judicial manner when it reconsidered the claim under section 52. It concluded that the Commission shouldn't have reconsidered the claim.⁴ The Commission appealed that decision to the Appeal Division, arguing that the General Division made several errors.

[5] I have found that the General Division made legal errors and didn't follow a fair process.⁵ To fix the errors, the file has to go back to the General Division for reconsideration.

Issues

[6] Did the General Division make a legal error when it found that the Commission had reconsidered the claim under section 52 of the EI Act?

¹ See application for benefits at pages GD3-3 to GD3-15.

² See Commission's reconsideration decision at page GD3-27.

³ See notice of debt at pages GD3-22 to GD3-23.

⁴ See General Division's decision at pages AD1-9 to AD1-15.

⁵ See section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

[7] Did the General Division make a legal error by not applying section 52 of the EI Act and relevant case law related to the Commission's exercise of discretion?

[8] Did the General Division fail to follow a fair process when it didn't give the Commission notice and an opportunity to provide evidence and arguments about the section 52 reconsideration issue?

[9] If so, how should the error or errors be fixed?

Analysis

The General Division decided that the Claimant got earnings that needed to be allocated to her claim and that the Commission hadn't exercised its discretion in a judicial manner

[10] The General Division found that the Claimant had separated from her employment on June 19, 2024. It decided that she got earnings in the form of vacation pay and the reimbursement of employer pension contributions, totalling \$6,748.78.⁶ It determined that the Commission had correctly allocated the earnings to the claim at \$1,535.10 per week starting the week of the lay-off.⁷

[11] The General Division decided that the Commission hadn't acted in a judicial manner when it reconsidered the claim under section 52 because it had failed to follow its own "reconsideration policy."⁸

[12] Specifically, it found that the Commission already knew about the vacation pay because it was recorded on her Record of Employment (ROE). And it noted that the Claimant had told the Commission about her pension reimbursement money, so she hadn't made any false or misleading statements to them.⁹

⁶ See paragraphs 9, 13–18 of the General Division decision.

⁷ See paragraphs 23–24 of the General Division decision.

⁸ See paragraphs 25–34 of the General Division decision and Chapter 17.3.3 of the *Digest of Benefit Entitlement Principles* (Digest) which sets out the Commission's reconsideration policy. Also see, *Molchan v Canada (Attorney General)*, 2024 FCA 46 at paragraph 20.

⁹ See paragraphs 32–34 of the General Division decision and pages GD3-20 to GD3-21.

[13] Finally, the General Division concluded that if the Commission had followed its own reconsideration policy, then “the claim for benefits wouldn’t have been reconsidered.”¹⁰

The General Division didn’t make an error of law when it found that the Commission had reconsidered the claim under section 52 of the EI Act

[14] An error of law happens 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.¹¹

[15] Section 45 of the EI Act says, “If a claimant receives benefits for a period and, under a labour arbitration award or court judgment, or for any other reason, an employer, a trustee in bankruptcy or any other person subsequently becomes liable to pay earnings, including damages for wrongful dismissal or proceeds realized from the property of a bankrupt, to the claimant for the same period and pays the earnings, the claimant shall pay to the Receiver General as repayment of an overpayment of benefits an amount equal to the benefits that would not have been paid if the earnings had been paid or payable at the time the benefits were paid.”

[16] Section 52 of the EI Act gives the Commission the power to reconsider a claim for benefits within 36 months after the benefits have been paid or would have been payable.¹² If the Commission is of the opinion that a false or misleading statement or representation has been made, they have 72 months to reconsider a claim.¹³ This is a discretionary provision. If the Commission decides that a person received benefits they were not entitled to, they must calculate the amount, notify the claimant and the overpayment becomes repayable.¹⁴

¹⁰ See paragraph 32 of the General Division decision.

¹¹ See section 58(1)(b) of the EI Act.

¹² See section 52(1) of the *Employment Insurance Act* (EI Act).

¹³ See section 52(5) of the EI Act.

¹⁴ See sections 52(2) and 52(3) of the EI Act.

[17] The Commission must always “exercise its discretion judicially.”¹⁵ The case law says that when the Commission decides to reconsider a claim, it cannot act in bad faith, or for an improper purpose or motive; take into account an irrelevant factor; ignore a relevant factor; or act in a discriminatory manner.¹⁶

[18] The Commission argues that the General Division erred in law by applying section 52 because the overpayment was established based on section 45. It says that the General Division ought to have applied section 45 instead, which is not discretionary and only involves the recovery of overpayments.¹⁷

[19] Respectfully, I disagree with the Commission. The General Division correctly decided that section 52 was applicable in this case.

[20] The evidence shows that the Claimant separated from her job on June 19, 2024, and received earnings based on section 35(2) of the *EI Regulations*. Specifically, she got vacation pay of \$1,523.76 and reimbursed pension contributions of \$4,314.14, totalling \$5,837.90.¹⁸ It decided that the earnings needed to be allocated starting the week of separation based on 36(9) of the *EI Regulations* at \$1,535.10 each week, with the remaining amount to be allocated to the last week.¹⁹

[21] The General Division did make a minor calculation error in its decision when it determined the total amount was \$6,748.78, but that error didn’t interfere with the allocation of the earnings (which was correctly decided).²⁰ The actual total of these amounts is \$5,837.90 (see Commission’s calculation chart at pages AD3-6 and GD4-5).

¹⁵ See *GP v Canada Employment Insurance Commission*, 2023 SST 192 at paragraphs 88–89. This Appeal Division decision was upheld as reasonable by the Federal Court of Appeal in *Puig v Canada (Attorney General)*, 2024 FCA 48.

¹⁶ See *Canada (Attorney General) v Purcell* (C.A.), 1995 CanLII 3558 (FCA), [1996] 1 FC 644.

¹⁷ I am aware of the Federal Court of Appeal (FCA) decision in *Faullem v Canada (Attorney General)*, 2022 FCA 29 at paragraphs 97–100 which says that section 52 is not applicable to the recovery of amounts based on s. 45 (or s. 46) of the EI Act. But it’s not applicable in this case because the Commission exercised their discretion to reconsider the claim under section 52.

¹⁸ See paragraphs 16 and 23 of the General Division decision.

¹⁹ See paragraphs 22–24 of the General Division decision.

²⁰ See paragraphs 2 and 9 of the General Division decision.

[22] The General Division relied on the Claimant's Record of Employment (ROE) which identified that she separated from employment, and the vacation pay she received.²¹ It also relied on the Claimant's subsequent disclosure to the Commission that she received reimbursement of the employer contributions made to her pension.²²

[23] As I see it, the General Division didn't make an error of law when it decided that section 52 was applicable in this case.²³ The liability to pay the vacation pay, and reimbursed pension contributions became *paid or payable* by the employer when she separated from her employment on June 19, 2024. It was the Claimant separating from her employment that triggered the employer's liability to pay her vacation pay and to reimburse pension contributions. While the reimbursed pension contributions were only paid to the Claimant a few months later, it became "payable" by the employer when she separated from her job.²⁴

[24] Section 45 of the EI Act deals with the return of benefits by a claimant that becomes payable after an employment has ended. It applies when separation monies are received after benefits are paid. It creates a liability for an overpayment of benefits and prevents a person from recovering earnings twice ("double dipping") for the same time period when they receive benefits.²⁵

[25] I find that the General Division correctly stated the law in its decision and determined that section 52 was applicable in this case. The liability for the vacation pay and reimbursed pension contributions were paid or payable when she separated from her job. This is distinguishable from the recovery of earnings under section 45 that become payable *after* benefits were paid and cover the same period (such as a court settlement, labour arbitration award, damages for wrongful dismissal, etc.).²⁶

²¹ See Record of Employment at pages GD3-18 to GD3-19.

²² See pages GD3-20 to GD3-21 and GD3-26.

²³ See paragraphs 29–30 of the General Division decision.

²⁴ See page GD3-20. The Claimant reported that she received that payment on September 4, 2024.

²⁵ Section 46 of the EI Act is similar and is a general repayment obligation for a return of benefits by an employer or other person. There is also a limitation set out in section 46.01 of the EI Act.

²⁶ For example, see *Canada Employment Insurance Commission v SB*, 2021 SST 659 and *AD v Canada Employment Insurance Commission*, 2024 SST 865.

The General Division made an error of law because it didn't apply section 52 and relevant case law related to the Commission's exercise of discretion

[26] The Commission argues that the General Division failed to apply the law correctly when it dealt with the exercise of their discretion under section 52. It points out that the General Division erred by focusing only on the reconsideration policy and failed to apply the legal test as set out in the case law.²⁷

[27] The Claimant explained that she wasn't sure whether the General Division made the error the Commission says it did.

[28] I agree with the Commission and find that the General Division made legal errors error when it dealt with section 52 and didn't apply the legal test set out in case law.²⁸

[29] The General Division needed to first decide whether the Commission had reconsidered the claim within the statutory time limits as set out in section 52.²⁹ While it correctly stated the time limits in its decision, it didn't apply them to the facts of the case.³⁰

[30] The case law says that the Commission has to exercise its discretion in a judicial manner. That means they can't act in bad faith, or for an improper purpose or motive; take into account an irrelevant factor; ignore a relevant factor; or act in a discriminatory manner.³¹

[31] This is the legal test that the General Division needed to apply. It needed to assess the factors set out above, weigh them and decide whether the Commission had exercised its discretion in a judicial manner.

[32] The General Division erred by solely focusing its decision on the Commission's reconsideration policy, but that isn't the law. The Commission is guided by the factors set out in their reconsideration policy, so they are "relevant factors," but they aren't

²⁷ See page AD3-7 and *Canada (Attorney General) v Purcell*, 1995 CanLII 3558 (FCA), [1996] 1 FC 644.

²⁸ See section 58(1)(b) of the EI Act.

²⁹ See sections 52(1) and 52(2) of the EI Act, which sets out the time limits for reconsidering the claim.

³⁰ See paragraph 29 of the General Division decision.

³¹ See *Canada (Attorney General) v Purcell* (C.A.), 1995 CanLII 3558 (FCA), [1996] 1 FC 644.

necessarily bound to apply them. Other factors that are relevant include those that relate to finality and accuracy.³²

[33] As a result, the General Division made legal errors when it dealt with section 52 and didn't apply the legal test set out in the case law.

The General Division didn't follow a fair process because it raised a new issue and didn't give the Commission an opportunity to provide evidence and arguments about that issue

[34] Natural justice is about the fairness of the process, and it includes certain procedural protections. Parties before the General Division have procedural protections such as the right to be heard, to know the case against them, to timely receipt of the notice of hearing and documents, and the right to an unbiased decision-maker are just some examples.

[35] The Commission argues that if section 52 is applicable, then the General Division didn't follow a fair process because it didn't notify them about this issue—namely, that it was going to consider section 52. So, they didn't have an opportunity to provide evidence and written arguments about that issue.

[36] I agree with the Commission. The General Division didn't follow a fair process.

[37] The reconsideration decision usually sets out the issue or issues under appeal. But sometimes a new legal issue is raised either before, during or after a hearing and it isn't always obvious on the file record.

[38] The General Division actively adjudicates appeals and is free to decide which issues need to be addressed.³³ And it can ask the Commission to investigate and report on any question related to a claim for benefits *anytime* before giving its decision.³⁴

³² See *Molchan* at paragraph 53.

³³ See section 17(2)(a) of the *Social Security Tribunal Rules of Procedure* (SST Rules).

³⁴ See section 53 of the SST Rules.

[39] I reviewed the file record and listened to the audio recording of the General Division hearing. Only the Claimant attended the teleconference hearing.³⁵

[40] At the beginning of the hearing, the General Division told the Claimant that the sole legal issue was “earnings.”³⁶ Near the end of the hearing, and after hearing the Claimant’s testimony, the General Division told the Claimant that the Commission had an obligation to act judicially and that it would also consider that issue.³⁷ This new issue was raised very briefly with the Claimant, without any detail for 1–2 minutes towards the end of the hearing.

[41] The General Division proceeded with its decision and finalized it, finding in the Claimant’s favour. But it didn’t notify the Commission that it was going to consider the section 52 reconsideration issue and didn’t give them an opportunity to respond to it. That amounted to a failure to follow a fair process in this case.

[42] If the General Division was going to raise a new issue at the hearing, then it should have given the Commission notice and an opportunity to file evidence and make arguments about the issue. I also think the Claimant should have been given a clearer opportunity to do the same because the General Division didn’t tell her about the legal test it would apply for section 52 or invite arguments about it.

[43] I find that the General Division didn’t follow a fair process which affected the Commission’s right to be heard and respond to the section 52 issue, as well as the Claimant’s.³⁸

Fixing the errors

[44] To fix the General Division’s errors, I can give the decision that the General Division should have given, or I can refer this matter back to the General Division for reconsideration.³⁹

³⁵ The file shows that the Commission received notice of the General Division hearing.

³⁶ Listen to the audio recording from the General Division hearing at 26:02 to 28:30.

³⁷ Listen to the audio recording from the General Division hearing at 47:47 to 49:57.

³⁸ See section 58(1)(a) of the DESD Act.

³⁹ See section 59(1) of the DESD Act.

[45] The Commission says that I should substitute with my own decision and allow the appeal. The Claimant indicated no preference for how to fix the errors.

[46] I find that the parties didn't get a full and fair opportunity to present their cases on all relevant issues. The record is incomplete, so I am returning the matter to the General Division for reconsideration.

Other unrelated matters

The Claimant asked the Commission if her benefit period could be extended

[47] At the Appeal Division hearing, the Claimant asked the Commission's representative if her benefit period could be extended by one week because her waiting period had been extended by one week. The Commission's representative noted the Claimant's request and suggested that it *may* be possible, depending on the decision that I make in this appeal file.

[48] I don't have jurisdiction to deal with the issue of "benefit period extension" because that wasn't the legal issue or reconsideration decision under appeal.⁴⁰ However, as the Commission's representative stated, the Claimant can follow up directly with them in a few weeks after this decision to inquire.

Conclusion

[49] The Commission's appeal is allowed. The General Division made legal errors and didn't follow a fair process in this case. The file will return to the General Division for reconsideration.

Solange Losier
Member, Appeal Division

⁴⁰ See sections 112 and 113 of the EI Act and Commission's reconsideration decision at page GD3-27.