



Citation: *MR v Canada Employment Insurance Commission*, 2026 SST 190

**Social Security Tribunal of Canada
Appeal Division**

Leave to Appeal Decision

Applicant: M. R.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated February 4, 2026
(GE-26-141)

Tribunal member: Pierre Lafontaine

Decision date: March 11, 2026

File number: AD-26-149

Decision

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

Overview

[2] The Applicant (Claimant) applied for sickness EI benefits. The Respondent (Commission) set up his claim (benefit period) starting May 12, 2024.

[3] The Commission conducted a review and determined the Claimant had been paid earnings for the same weeks he had collected EI benefits, where no earnings were declared or previously allocated. Specifically, the Claimant had been paid statutory holiday pay and a payout of unused personal days during the same weeks he had received EI benefits.

[4] The Commission allocated those earnings to the Claimant's claims for the weeks of June 30, 2024, July 7, 2024, and August 4, 2024. This allocation resulted in a \$856.00 overpayment of EI Benefits. The Commission maintained its decision upon reconsideration. The Claimant appealed to the General Division of the Tribunal.

[5] The General Division found that the unused personal days that were payable as of June 30, 2024, under the employment contract, were earnings, and that these earnings had to be allocated to the week of June 30, 2024.

[6] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. The Claimant submits that he does not agree with the General Division decision. He submits that he did not work or earn earnings while receiving EI benefits. He puts forward that these earnings are from the previous year.

[7] I must decide whether the Claimant raised some reviewable error of the General Division upon which the appeal might succeed.

[8] I refuse leave to appeal because the Claimant's appeal has no reasonable chance of success.

Issue

[9] Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

Analysis

[10] The law specifies the only grounds of appeal of a General Division decision.¹ These reviewable errors are that:

1. The General Division hearing process was not fair in some way.
2. The General Division did not decide an issue that it should have decided. Or, it decided something it did not have the power to decide.
3. The General Division based its decision on an important error of fact.
4. The General Division made an error of law when making its decision.

[11] An application for leave to appeal is a preliminary step to a hearing on the merits. It is an initial hurdle for the Claimant to meet, but it is lower than the one that must be met on the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove his case but must establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, that there is arguably some reviewable error upon which the appeal might succeed.

[12] Therefore, before I can grant leave, I need to be satisfied that the reasons for appeal fall within any of the above-mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success.

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

Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

[13] The Claimant does not agree with the General Division decision. He submits that he did not work or earn earnings while receiving EI benefits. He puts forward that these earnings are from the previous year.

[14] The Claimant's employment contract provides that he is entitled to 13 paid personal days per year. Any unused personal days, as of June 30th, become payable and are paid out annually on pay period 16 of each year. In 2024, he was paid the unused personal days on August 1, 2024, in the amount of \$1,154.89.

[15] In his request for reconsideration, the Claimant said that the amount in question stems entirely from a payout of unused personal days, **an accrued entitlement**, not earnings for time worked during his benefit period.²

[16] The law states that "*the earnings to be taken into account [...] are the entire income of a claimant arising out of any employment...*".³

[17] In this case, there is a sufficient connection between the income received and the employment held by the Claimant. It was calculated according to the unused personal days and respected the terms of the contract of employment.

[18] Therefore, I see no reviewable error made by the General Division when it determined that the amount paid by the employer constitutes earnings within the meaning of section 35 of the *Employment Insurance Regulations* (EI Regulations).

[19] In a similar case, the claimant received an amount equivalent to accumulated sick leave that had become payable, in accordance with the collective agreement, on a date corresponding to the benefit period. The Umpire upheld the Commission's decision that the determinative date was the date when the amount became payable according

² See GD3-47.

³ Section 35(2) of the *Employment Insurance Regulations*.

to the provisions of the collective agreement.⁴ The Federal Court of Appeal upheld the Umpire's decision.⁵

[20] I see no reviewable error made by the General Division when it considered the payment for the unused personal days received by the Claimant as earnings, and that these earnings had to be allocated to the week of June 30, 2024.⁶

[21] After reviewing the appeal file and the General Division's decision as well as considering the Claimant's arguments in support of his request for leave to appeal, I have no choice but to find that the appeal has no reasonable chance of success. The Claimant has not set out a reason, which falls into the above-enumerated grounds of appeal that could possibly lead to the reversal of the disputed decision.

Conclusion

[22] Leave to appeal is refused. This means the appeal will not proceed.

Pierre Lafontaine
Member, Appeal Division

⁴ CUB 20198.

⁵ See A-1028-91; See also *G. G. v. Canada Employment Insurance Commission*, 2014 SSTAD 10, CUB 34691, CUB 32622, CUB 30810, CUB 51191.

⁶ Although I am of the view that the amount should be allocated under section 36(19) of the *Employment Regulations*, the result remains that the amount must be allocated to the week of June 30th.