



Citation: *HC v Canada Employment Insurance Commission*, 2026 SST 201

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

# **Extension of Time Decision and Leave to Appeal Decision**

**Applicant:** H. C.  
**Representative:** R. D.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated October 6, 2025  
(GE-25-2170)

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**Tribunal member:** Elsa Kelly-Rhéaume

**Decision date:** March 13, 2026

**File number:** AD-26-36

## Decision

[1] I am giving the Claimant more time to file her appeal. But I'm not granting her leave (permission) to appeal. The appeal will not go forward.

## Overview

[2] The Claimant, H. C., was paid regular Employment Insurance (EI) benefits. The Canada Employment Insurance Commission (Commission) was informed by the Claimant's employer that she had received earnings during her benefit period.

[3] The Commission decided that the Claimant had not declared the salary she received from her employer from December 20, 2020, to September 26, 2021.<sup>1</sup> The Commission decided the Claimant had to pay back the benefits she was not entitled to. It also decided that she had knowingly made false representations. The Commission imposed a penalty of \$1,347 to the Claimant for having made five false representations. The Commission also issued a notice of a serious violation.

[4] The Claimant asked the Commission to reconsider its decision.<sup>2</sup> She stated that she was going to file a police report because she said she had been a victim of fraud. She said that to her knowledge she had not made the EI reports during the period in question. She believed her ex-husband may be responsible.

[5] On November 7, 2024, the Commission maintained its decision on the issue of the Claimant having to pay back the benefits she received that she wasn't entitled to (earnings).<sup>3</sup> It also maintained its decision on the serious violation. But it lowered the penalty to \$1,077.

[6] The Claimant then appealed to the General Division on July 23, 2025.<sup>4</sup> Her appeal to the General Division was late. But the General Division decided she had a reasonable explanation for being late.<sup>5</sup> The General Division decided that it was

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<sup>1</sup> See the Notice of Decision at GD3-139.

<sup>2</sup> See the Reconsideration request at GD3-144.

<sup>3</sup> See the Notice of Decision at GD3-153.

<sup>4</sup> See the Notice of Appeal at GD2-1.

<sup>5</sup> See the General Division's decision to give the Claimant more time to file her appeal at GD7-1.

reasonable the Claimant filed a late appeal, because she had been directed to file a motion with the Federal Court of Canada and tried to find a lawyer.

[7] On October 6, 2025, the General Division allowed her appeal in part.<sup>6</sup> The General Division found that the Commission acted properly when it decided to reconsider the Claimant's application for benefits. And that the Commission had correctly allocated her earnings. It decided the Claimant had to pay back the benefits she was overpaid in the amount of \$11,674. But the General Division decided that the Claimant had not knowingly made misrepresentations. So it decided to remove the penalty and serious violation from her file.

[8] The Claimant filed her application for leave (permission) to appeal on January 13, 2026. The application appears to be late.

## Issues

[9] The issues in this appeal are:

- a) Was the application to the Appeal Division late?
- b) Should I give the Claimant more time for filing the application?
- c) If I extend the time for filing the application, does the Claimant's appeal have a reasonable chance of success?

## Analysis

### The application was late

[10] In her application to the Appeal Division, the Claimant stated she didn't remember when she received the General Division's decision.<sup>7</sup> Even so, the Appeal Division gave the Claimant another opportunity to say when she had received the

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<sup>6</sup> See the General Division's decision at AD1A-2.

<sup>7</sup> See the Claimant's application to the Appeal Division at AD1-2.

General Division decision.<sup>8</sup> She responded that she had received it on October 15, 2025.<sup>9</sup>

[11] The law says that the Claimant had 30 days after the day on which she received the written decision to file her application for leave to appeal to the Appeal Division.<sup>10</sup> That means the Claimant had until November 14, 2025, to file her application for leave to appeal to the Appeal Division.

[12] The *Social Security Tribunal Rules of Procedure* state that a document is considered filed on the date the Tribunal receives it.<sup>11</sup> So the Claimant filed her application for leave to appeal on January 13, 2026, because that is when the Appeal Division received it.

[13] The Claimant's Application for leave to appeal was **60 days late**.

### **I'm giving the Claimant more time for filing her application for leave to appeal**

[14] I can give a Claimant more time if they have provided a reasonable explanation for why the application was late.<sup>12</sup> I find that the Claimant has given a reasonable explanation for why her application was late.

[15] She told the Appeal Division that she tried to see if the Canada Revenue Agency (CRA) would cancel her debt but was told to go back to the Social Security Tribunal.<sup>13</sup>

[16] I find this explanation reasonable. The Claimant thought she could obtain a write-off for the amount owed. But when she could not, she realised her only recourse was to appeal to the Appeal Division.

[17] I am giving the Claimant more time to file her application for leave to appeal.

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<sup>8</sup> See the Appeal Division's request for more information sent on January 16, 2026.

<sup>9</sup> See the Claimant's email at AD1E-1.

<sup>10</sup> See section 57(1)(a) of the *Department of Employment and Social Development Act*.

<sup>11</sup> See section 19(2) of the *Social Security Tribunal Rules of Procedure*.

<sup>12</sup> It says this in section 27(2) of the *Social Security Tribunal Rules of Procedure*.

<sup>13</sup> See the Claimant's email dated February 12, 2026, at AD1E-1.

## I'm not giving the Claimant permission to appeal

### The legal test for granting permission to appeal

[18] Permission to appeal is required for the Appeal Division to hear an appeal on the merits.<sup>14</sup>

[19] I can give the Claimant permission to appeal if the appeal has a reasonable chance of success, based on one of the grounds of appeal set out in the law. A reasonable chance of success means having some arguable ground upon which the appeal might succeed.<sup>15</sup>

[20] So the Claimant must show an arguable case that the General Division did one of the following:

- breached the principles of procedural fairness
- acted beyond its powers or refused to exercise its powers
- made an error in law
- based its decision on an important error of fact.<sup>16</sup>

[21] I must refuse the application for permission to appeal if the appeal has no reasonable chance of success.<sup>17</sup>

[22] I have reviewed the record and the General Division's decision and listened to the recording of the General Division's hearing before making my decision.

[23] In her application to the Appeal Division, the Claimant checked the box that said the General Division made an error of procedural fairness.<sup>18</sup> But she didn't say how.

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<sup>14</sup> See section 56(1) of the *Department of Employment and Social Development Act*.

<sup>15</sup> See *Osaj v Canada (Attorney General)*, 2016 FC 115 at paragraph 12.

<sup>16</sup> See section 58(1) of the *Department of Employment and Social Development Act*.

<sup>17</sup> See section 58(2) of the *Department of Employment and Social Development Act*.

<sup>18</sup> See the Claimant's Application to the Appeal Division at AD1-3.

[24] So the Appeal Division sent her a letter requesting additional information. The Appeal Division asked the Claimant to explain **in detail** why she is appealing the General Division decision.<sup>19</sup> The Claimant responded and provided some additional information.<sup>20</sup> She said the General Division decision was made without all the facts. She said she had to go and get a police report, but she wasn't well at the time. She said she went to get the police report and sent it in but was told it was too late.

### **There is no arguable case the General Division didn't respect procedural fairness**

[25] The Claimant says that it wasn't fair that she was told to get a police report but then when she did get it, was told it was too late.

[26] When looking at whether there is an arguable case the General Division breached the principles of procedural fairness, I must look at whether the Claimant had a fair opportunity to be heard, and whether the General Division was independent and impartial in its decision-making.

[27] I find there is no arguable case that the General Division breached the principles of procedural fairness by rendering its decision before the Claimant provided the police report reference number. I note that the Claimant didn't ask the General Division for additional time to submit a police report.

[28] At the hearing before the General Division, the Claimant had expressed wanting to provide additional documents after the hearing. She wanted to prove she didn't have access to the joint bank account she had with her ex-husband, in which the EI benefits were deposited, after November 2020. She said that she had opened her own personal

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<sup>19</sup> See the Request for additional information sent on January 16, 2026.

<sup>20</sup> See the Claimant's email dated February 12, 2026, at AD1D-1.

bank account at that time. She also wanted to provide an affidavit signed by her ex-husband. So the General Division gave her extra time to do so.<sup>21</sup>

[29] The General Division gave the Claimant an additional week after the hearing to provide any evidence she wished to submit. She gave the Claimant until September 12, 2025, to provide additional documents.<sup>22</sup> It was open to the Claimant to provide any documents she wished to within that time frame.

[30] Before the General Division made its decision, but after the deadline of September 12, 2025, had passed, the Claimant emailed the Tribunal saying she had filed a police report and would be providing the reference number for it.<sup>23</sup> The General Division made its decision on October 6, 2025. After the decision was made, the Claimant emailed the General Division again on October 14, 2025.<sup>24</sup> In this email, the Claimant provided a reference number for the police report she says she filed. She did not attach a copy of the police report.

[31] The Claimant alleges she should have been allowed to file her police report number before the General Division made its decision. But the *Social Security Tribunal Rules of Procedure* state that the Tribunal must not consider any evidence filed after a filing deadline unless the Tribunal gives it permission to do so.<sup>25</sup> The Claimant didn't ask for more time to submit a police report.

[32] In addition, the Claimant had ample time before the General Division hearing and within the extra week granted to provide evidence of a police report. The Claimant has said since 2024 that she was going to file a police report against her ex-husband. The General Division pointed out in its decision that the Claimant had told the Commission on July 31, 2024, that her ex-husband was presumably responsible for filing the inaccurate EI reports and that she was a victim of fraud.<sup>26</sup> The Claimant had said at that

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<sup>21</sup> See the General Division's decision at AD1A-21 at paragraph 103.

<sup>22</sup> Listen to the Recording of the General Division's hearing at 01:09:50.

<sup>23</sup> See the email sent on September 30, 2025, at GD13-1.

<sup>24</sup> See the Claimant's email on October 14, 2025.

<sup>25</sup> See section 42(1) of the *Social Security Tribunal Rules of Procedure*.

<sup>26</sup> See the General Division's decision at AD1A-18 at paragraph 96.

time that she would be filing a police report to initiate a criminal investigation into the matter.<sup>27</sup> Also, the Claimant knew as early on as September 29, 2023, that the Commission was looking into why she hadn't disclosed her earnings from her employer during her benefit period.<sup>28</sup>

[33] There is no arguable case the General Division breached its duty of providing a fair process by rendering its decision before the Claimant provided the police report reference number.

[34] In fact, even though the Claimant submitted an email declaring she had filed a police report on September 30, 2025, after the deadline of September 12, 2025, the General Division still considered that email in its decision.<sup>29</sup> The General Division's decision shows that it **did consider** that the Claimant had filed a police report against her ex-husband, whom she holds responsible for filing the EI reports.

[35] The General Division took this email into account in her decision and wrote that the Claimant had proceeded to author a police report. In addition, it found the Claimant credible regarding her ex-husband's behavior.<sup>30</sup> So I find no arguable case that the General Division failed to provide a fair process, because she allowed the Claimant extra time to submit documents and also considered the fact that the Claimant said she had filed a police report.

[36] In addition, the Claimant was represented by R. D. at her hearing before the General Division. So she had his help in presenting her point of view. The General Division also allowed him to testify about the Claimant's ex-husband's behaviour.<sup>31</sup>

[37] The General Division made sure that the Claimant and her representative knew of the Commission's position and were able to respond.<sup>32</sup> The member said she would

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<sup>27</sup> See the General Division's decision at AD1A-18 at paragraph 96.

<sup>28</sup> See the Commission's letter to the Claimant about undisclosed earnings at GD3-129.

<sup>29</sup> See the General Division's decision at AD1A-21 at paragraph 105.

<sup>30</sup> See the General Division's decision at AD1A-23 at paragraph 114.

<sup>31</sup> Listen to the Recording of the General Division's hearing at 00:20:50.

<sup>32</sup> Listen to the Recording of the General Division's hearing at 00:16:10.

go through each issue one after the other to allow the Claimant to present her position on each issue. She also explained the legal test for each step of the way.

[38] I find that there is no arguable case the General Division failed to provide a fair process, as she explained the legal tests applicable to all the issues she had to decide, she allowed the Claimant and her representative to testify, granted extra time to provide additional documents and considered the Claimant's email in which she said she had filed a police report. There is no arguable case the General Division was anything but impartial and independent either.

**There is no arguable case the General Division made an error other than the one alleged by the Claimant, that could allow me to intervene**

[39] The Federal Court has asked the Appeal Division not to mechanically look at an application for leave to appeal when someone is not represented.<sup>33</sup> Though the Claimant is represented, out of an abundance of caution, I have gone through the file to examine whether there is an arguable case any errors may have been made by the General Division. But I have found none.

**– There is no arguable case the General Division made an error in law**

[40] An error in law occurs when the General Division doesn't apply the correct legal test or fails to consider an element of a legal test in its analysis.

[41] I find no arguable case the General Division made an error in law in its analysis of the Commission's decision to reconsider the Claimant's application for benefits.

[42] The General Division stated that when deciding whether to reconsider a claim, the Commission must consider factors that go to the need for finality and accuracy.<sup>34</sup> The General Division stated that a claimant's personal circumstances, such as stress or the ability to repay, aren't relevant when deciding whether to reconsider benefits.<sup>35</sup> The

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<sup>33</sup> See the Federal Court's decision *Karadeolian v Canada (Attorney General)*, 2016 FC 615 at paragraph 10.

<sup>34</sup> See the General Division's decision at AD1A-10 at paragraph 55. The General Division cited the Federal Court of Appeal's decision in *Molchan v. Attorney General (Canada)*, 2024 FCA 48.

<sup>35</sup> See the General Division's decision at AD1A-10 at paragraph 56.

General Division supported this assertion by citing a decision by the Appeal Division. In *Canada Employment Insurance Commission v MA*, the Appeal Division decided that the right time to consider a claimant's personal circumstances is when deciding whether to forgive their debt.<sup>36</sup>

[43] What is more, the General Division referred to the Commission's policy on exercising discretion in reconsidering a claim under section 52 of the *Employment Insurance Act*.<sup>37</sup> There is no arguable case that the General Division incorrectly described the content of the policy. Indeed, the Federal Court of Appeal in *Molchan*<sup>38</sup> addressed the Digest of Benefit Entitlement Principles and specifically, its "Reconsideration policy". In that decision, the Federal Court of Appeal said the Commission had developed a policy to ensure a consistent and fair application of section 52 of the *Employment Insurance Act*. And that a claim will only be reconsidered if, amongst others, benefits were paid because of a false or misleading statement.<sup>39</sup> The policy is not binding on the General Division but can be relied upon to examine whether the Commission acted judicially in reconsidering the Claimant's application for benefits.

[44] The General Division pointed out that a claim for benefits will be reconsidered if, among other things, benefits were paid because of a false or misleading statement.<sup>40</sup> The General Division decided that the Commission had followed its policy and reconsidered the Claimant's claim because benefits were paid as a result of misleading statements. The General Division concluded that the EI reports contained no indication that the Claimant had worked or earned any earnings during the weeks in which the Claimant submitted EI reports. But the employer's evidence showed the Claimant

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<sup>36</sup> See the Appeal Division's decision *Canada Employment Insurance Commission v MA*, 2022 SST 1018 at paragraph 25.

<sup>37</sup> See the General Division's decision at AD1A-11 at paragraph 58.

<sup>38</sup> See the Federal Court of Appeal's decision *Molchan v Canada (Attorney General)*, 2024 FCA 46 at paragraphs 18 to 20.

<sup>39</sup> See the Federal Court of Appeal's decision in *Molchan v Canada (Attorney General)*, 2024 FCA 46 at paragraph 20.

<sup>40</sup> See the General Division's decision at AD1A-11 at paragraph 59.

received earnings in 41 weeks in which benefits were claimed. The General Division concluded that meant benefits were paid because of false information.

[45] The General Division also decided there was no evidence the Commission ignored a relevant factor or considered an irrelevant factor when it exercised its discretion to reconsider the Claimant's claim. It didn't find any evidence the Commission acted in bad faith or for an improper purpose or motive or that it was biased or acted in a discriminatory manner either.<sup>41</sup>

[46] The General Division considered the Claimant's testimony that her ex-husband committed fraud and that she didn't do anything wrong and didn't know she was getting the EI benefits.<sup>42</sup> But the General Division decided that wasn't relevant to what the Commission had to consider when deciding whether to reconsider a claim under section 52 of the *Employment Insurance Act*.<sup>43</sup>

[47] The General Division determined that the Commission had acted judicially. This meant the General Division couldn't intervene in the Commission's decision. The General Division explained that the law says wages from employment are earnings that must be allocated against EI benefits.<sup>44</sup> It also explained that earnings must be allocated to the period in which the work was performed. So it confirmed the overpayment that the Claimant must pay back.

[48] There is no arguable case the General Division made an error of law in reviewing the decision to impose a penalty and issue a serious violation. The General Division stated that the Commission had to prove the Claimant **knowingly** provided false or misleading information in order to impose a penalty.<sup>45</sup> The General Division decided that

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<sup>41</sup> See the General Division's decision at AD1A-12 at paragraphs 63 and 64. The Federal Court of Appeal defined what it means to exercise a discretionary power judicially in *Attorney General of Canada v Purcell*, A-694-94.

<sup>42</sup> See the General Division's decision at AD1A-10 at paragraph 53.

<sup>43</sup> See the General Division's decision at AD1A-10 at paragraph 54.

<sup>44</sup> See the General Division's decision at AD1A-4 at paragraphs 18 to 20. The General Division referred to sections 35 and 36 of the *Employment Insurance Regulations*.

<sup>45</sup> See the General Division's decision at AD1A-12 at paragraph 68.

the Commission hadn't exercised its discretion properly and so decided to intervene. The General Division decided to cancel the penalty, **in the Claimant's favor.**

[49] The General Division decided it was more likely the EI benefits were paid on the basis of claimant reports that were wrongfully submitted by a third party, **without the Appellant's knowledge**, consent or authorization. It also decided the Commission hadn't proven that it was the Appellant who submitted the false reports or that she had authorized another person to act on her behalf. So the General Division concluded that the Commission had not proven the Claimant or someone acting on her behalf knowingly made false or misleading statements by failing to report her earnings.

[50] There is no arguable case the General Division made an error in law in assessing whether the violation was imposed properly. Because it decided that the penalty should be removed, it decided that the violation should also be removed.<sup>46</sup> That is because section 7.1(4) of the *Employment Insurance Act* says that a violation can be issued when one or more penalties is imposed. This issue was decided **in the Claimant's favor.**

– **There is no arguable case the General Division made an important error of fact**

[51] In its decision, the General Division recognised that the Claimant denied being the person who filed EI reports for the period during which she is being asked to repay her benefits.<sup>47</sup> She said she stopped filing reports when she returned to work at the daycare and didn't realise benefits were still being paid to her.

[52] The fact remains that the Claimant didn't dispute that she did receive the earnings reported by her employer from December 2020 to September 26, 2021.<sup>48</sup> The Claimant confirmed that she did work during the 41-week period in question. She also said she did not doubt the earnings reported by her employer. The General Division also noted that the Claimant was not contesting the weekly amounts allocated against her claim. The General Division made sure at the hearing that the Claimant understood

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<sup>46</sup> See the General Division's decision at AD1A-26 at paragraph 128.

<sup>47</sup> See the General Division's decision at AD1A-3 at paragraph 13.

<sup>48</sup> Listen to the Recording of the General Division's hearing at 00:22:00.

that earnings received during a benefit period have to be allocated.<sup>49</sup> The Claimant accepted this. The Claimant stated that she didn't dispute the allocation of earnings made by the Commission at GD3-129 and GD3-130.<sup>50</sup> She also recognised early on in her dealings with the Commission that she was responsible for the reports made in her account.<sup>51</sup>

[53] The General Division weighed the evidence and found that on a balance of probabilities, the Claimant continued to use the joint account she had with her ex-husband until she opened a new bank account on July 18, 2022.<sup>52</sup> The General Division also decided that meant that the EI benefits that were overpaid were received by the Claimant.

[54] There is no arguable case that this finding of fact is unsupported by the evidence. The Commission informed the General Division that the Claimant used the same bank account from April 17, 2020, to July 25, 2025. And then changed her direct deposit account to a different account effective July 26, 2025.<sup>53</sup> The Claimant also said she couldn't provide any evidence that she hadn't been able to access the joint bank account the EI benefits were directly deposited into.<sup>54</sup> She had checked with her bank and her name was still on the joint bank account.<sup>55</sup> The Claimant also confirmed after the hearing that she realised she had opened her new bank account on July 18, 2022.<sup>56</sup> At the hearing, she had mistakenly said she opened her new bank account when she separated from her ex-husband in the Fall of 2020.

[55] The General Division looked at the Commission's calculation of the overpayment at GD11-24 and found that the overpayment had been correctly calculated. The General Division concluded that the Claimant had obtained wages during her benefit period. The General Division concluded that EI benefits were paid on the claim established by the

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<sup>49</sup> Listen to the Recording of the General Division's hearing at 00:23:00.

<sup>50</sup> Listen to the Recording of the General Division's hearing at 00:24:30.

<sup>51</sup> See the notes about a telephone conversation at GD3-133.

<sup>52</sup> See the General Division's decision at paragraph 141 and 142.

<sup>53</sup> See the Commission's response to the Investigation and Report at GD11-1 and following.

<sup>54</sup> See the Claimant's email sent on September 11, 2025, at GD-12.

<sup>55</sup> See the Claimant's email sent on September 11, 2025, at GD-12.

<sup>56</sup> See the Claimant's email sent on September 11, 2025, at GD-12.

Claimant herself and deposited in her own bank account. It decided that the EI reports didn't disclose any work during that period. So the General Division confirmed the allocation of earnings calculated by the Commission in the amount of \$11,674.

[56] There is no arguable case that the General Division omitted or ignored important evidence. The Appeal Division cannot reweigh the evidence.<sup>57</sup> It was open to the General Division to find that the Claimant had received the EI earnings in an account that she still was responsible for, despite her saying she had never had any knowledge of any EI benefits going into that account. The Appeal Division cannot simply substitute its view of the evidence to that of the General Division's.<sup>58</sup> There is no arguable case that the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.<sup>59</sup>

– **There is no arguable case the General Division made an error of jurisdiction**

[57] The General Division had to review whether the Claimant had indeed received earnings while she also received benefits. It also had to decide whether the Commission exercised its discretion judicially when deciding to reconsider the Claimant's application for benefits, impose a penalty and issue a serious violation.

[58] There is no arguable case the General Division decided something it shouldn't have and it appears to have dealt with all the issues brought forward by the Claimant.

[59] So there is no arguable case the General Division made an error of jurisdiction.

## Conclusion

[60] I have given the Claimant an extension of time to apply to the Appeal Division. But I'm not granting her permission to appeal.

Elsa Kelly-Rhéaume  
Member, Appeal Division

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<sup>57</sup> See the Federal Court's decision *Ponomarov v Canada (Attorney General)*, 2025 FC 328 at paragraph 20.

<sup>58</sup> See the Federal Court of Appeal's decision *Sibbald v Canada (Attorney General)*, 2022 FCA 157.

<sup>59</sup> See section 58(1)(c) of the *Department of Employment and Social Development Act*.