



[TRANSLATION]

Citation: *VB v Canada Employment Insurance Commission*, 2026 SST 242

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: V. B.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated January 26, 2026
(GE-25-3075)

Tribunal member: Elsa Kelly-Rhéaume

Decision date: March 25, 2026

File number: AD-26-135

Decision

[1] Permission to appeal is refused. The appeal won't go ahead.

Overview

[2] The Claimant, V. B., established a benefit period on September 24, 2023.¹

[3] On March 4, 2025, after an investigation, the Commission decided that it could not pay the Claimant Employment Insurance (EI) regular benefits as of January 7, 2024. That was because he voluntarily stopped working for X on January 8, 2024, without good cause.² The Commission also decided that the Claimant was in a training course from February 12, 2024, to June 1, 2024. And so, he could not get EI benefits for that period because he wasn't available for work. He reported only part of his income from X. The Commission said that he had to pay back the benefits he wasn't entitled to. The Commission also decided to impose an \$8,000 penalty because he made 11 false statements. It also issued a formal notice of violation afterwards because he already had a violation on file for a past benefit period.

[4] The Claimant asked for that decision to be reconsidered.³

[5] The Commission upheld its decision about him voluntarily leaving X.⁴ It also upheld its decision about the Claimant not being available. But it changed the dates of the period when he wasn't available. It decided that the Claimant wasn't entitled to EI benefits from January 8, 2024, to June 19, 2024. It also upheld the penalty.

¹ See the overpayment explanation at GD3-101.

² See the notice of decision at GD3-95.

³ See the reconsideration request at GD3-102.

⁴ See the notice of decision at GD3-110.

[6] The Claimant appealed that decision to the General Division.⁵ The General Division allowed his appeal in part. It decided the following:

- The Claimant didn't voluntarily leave his job.⁶ So, the General Division decided that he was available for work from January 8, 2024, to February 11, 2024.⁷
- The Claimant wasn't available for work from February 12, 2024, to June 19, 2024, because he was in training during that period.⁸
- The wages the Claimant got from December 10 to 23, 2023, are earnings, and the Commission correctly allocated them.⁹
- The Commission didn't use its discretion judicially when it imposed a penalty on the Claimant. So, the General Division reduced the penalty to \$4,000 because of the mitigating circumstances on file.¹⁰
- The Commission didn't use its discretion judicially when it issued the Claimant a notice of violation. So, the General Division removed the notice of violation.¹¹

[7] The Claimant is now asking for permission to appeal the General Division decision. In his application to the Appeal Division, **he said that he wasn't challenging the decision about the benefits he had to pay back.**¹² He was happy that the General Division allowed his appeal on the issue of voluntary leaving and in part on the issue of him being available for work. **He is disputing the penalty amount.**

⁵ See the notice of appeal at GD2.

⁶ See the General Division decision at AD1A-2 at para 2.

⁷ See the General Division decision at AD1A-2 at para 3.

⁸ See the General Division decision at AD1A-2 at paras 4 and 58.

⁹ See the General Division decision at AD1A-2 at para 5.

¹⁰ See the General Division decision at AD1A-41 at para 191.

¹¹ See the General Division decision at AD1A-42 at paras 202 and 203.

¹² See the application to the Appeal Division at AD1-4. I note that the Claimant sent a copy of his application to the Appeal Division on March 24, 2026. See AD01B.

[8] I understand that the Claimant might be facing financial hardship. But I can't give permission to appeal for the reasons that follow.

Issues

[9] I have to decide the following issues:

- Is there an arguable case that the General Division made an error of law by not considering all of the mitigating circumstances on file when it decided the penalty amount?
- Is there an arguable case that the General Division made an error, other than the one the Claimant alleges, that would allow me to intervene?

I am not giving the Claimant permission to appeal

The legal test for giving permission to appeal

[10] Permission to appeal has to be given for an appeal to be heard on the merits.¹³

[11] I can only give permission to appeal if the Claimant raises arguable grounds that could allow him to succeed.¹⁴ I have to refuse the application for permission to appeal if I am satisfied that the appeal has no reasonable chance of success¹⁵. A reasonable chance of success means that the Claimant could argue his case and possibly succeed.

[12] The appeal has to relate to one of the grounds of appeal set out in the *Department of Employment and Social Development Act*. This means that I have to decide whether there is an arguable case that the General Division made one of the following errors:

- failed to follow the principles of procedural fairness
- made an error of jurisdiction

¹³ See section 56(1) of the *Department of Employment and Social Development Act* (DESD Act).

¹⁴ See *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12.

¹⁵ See section 58(2) of the DESD Act.

- made an error of law
- based its decision on an important error of fact¹⁶

[13] So, I have to give permission to appeal if the General Division might have made one of these errors and if that error would give the Claimant's appeal a reasonable chance of success.

[14] To give my decision, I looked at the administrative file that was before the General Division, listened to the hearing recording, read the General Division decision, and carefully reviewed the Claimant's application to the Appeal Division.¹⁷

There is no arguable case that the General Division made an error of law

– The legal test for intervening on the issue of a penalty

[15] Section 38(1) of the *Employment Insurance Act* gives the Commission wide discretion to impose a penalty for statements that the claimant knew were false or misleading.¹⁸ So, the Commission can decide to impose a penalty and set the amount.

– The General Division's reasons for intervening on the issue of the penalty

[16] The General Division can only change a decision the Commission gave on the issue of a penalty if the Commission didn't use its discretion judicially—or properly.¹⁹ When the Commission decides to impose a penalty, it has to act in good faith, consider all the relevant factors, and set aside those that aren't. The General Division explained this legal test in its decision.²⁰ The Claimant isn't saying that the General Division applied the wrong legal test. In fact, the General Division intervened in his favour, saying that the Commission didn't act judicially.

¹⁶ See section 58(1) of the DESD Act.

¹⁷ See the application to the Appeal Division at AD1.

¹⁸ See the Federal Court decision *Horton v Canada (Attorney General)*, 2020 FC 743 at para 38. It confirmed the Commission's discretion to impose a penalty in cases of false or misleading statements.

¹⁹ See the General Division decision at AD1A-38 at para 76.

²⁰ See the General Division decision at AD1A-38 at para 176.

[17] The General Division said that the Commission didn't set the penalty amount in a judicial way because it didn't consider all of the relevant facts on file. The General Division agreed with the decision to impose a penalty. But it said that the Commission didn't consider the following factors when it set the amount:

- The Claimant's explanations showing that he didn't make a false statement when he answered that he didn't take training for the period between December 10, 2023, and February 3, 2024
- The Claimant's explanations that he didn't make a false statement when he reported his earnings from December 10 to 23, 2023. He was only a few hundred dollars off the exact amounts.²¹
- The Claimant's difficulties in paying back the amounts the Commission asked for²²

[18] The General Division said that the Claimant actually made statements that he knew were false. But considering the mitigating circumstances, the General Division cut the penalty in half, reducing it from \$8,000 to \$4,000.²³

[19] So, the General Division intervened in the Claimant's favour by cutting in half the penalty that was imposed on him.

– **The Claimant isn't disputing that he made statements he knew were false**

[20] The General Division looked at the different statements the Claimant made that the Commission said were false or misleading. For some, the General Division decided that the Claimant didn't knowingly make them. To set the penalty, I will focus on the General Division's findings that are related to imposing the penalty.

²¹ See the General Division decision at AD1A-37 at para 168.

²² See the General Division decision at AD1A-41 at paras 187 and 188.

²³ See the General Division decision at AD1A-41 at para 191.

[21] The General Division decided that the Claimant knew he was making false or misleading statements when he said that he wasn't in training and that he didn't get or wasn't going to get any money in his reports from February 4 to June 8, 2024.²⁴ The General Division found the following based on the evidence:

- The Claimant was in training from February 12 to June 19, 2024, to get a vocational studies certificate as a refrigerator technician.
- He was in training in person Monday to Friday, from 7:00 a.m. to 3:00 p.m. In total, the training was 630 hours of classes.
- He got \$750 a week to take this training.²⁵

[22] At the hearing before the General Division, the Claimant acknowledged that he made false statements when he said that he wasn't in training when he was.²⁶ He isn't disputing before the Appeal Division that he made statements he knew were false.

– **There is no arguable case that the General Division didn't consider the mitigating circumstances**

[23] The Claimant agrees that he should be penalized for his false statements. But he argues that he didn't mean to act fraudulently.²⁷ He says the penalty is still too high. The General Division didn't consider the following mitigating circumstances:

- He was going through a difficult financial period after his new baby was born.
- His partner was getting the minimum benefits under the Québec Parental Insurance Plan (QPIP).
- He went back to school.

²⁴ See the General Division decision at AD1A-34 at para 162.

²⁵ See the General Division decision at AD1A-17 at para 60. Listen to the General Division hearing recording at 25:00.

²⁶ Listen to the General Division hearing recording at 36:00, 39:00, and 56:00.

²⁷ See the application to the Appeal Division at AD1-4.

- He called Service Canada to say that he would pay back the amounts he got but wasn't entitled to.
- He doesn't know how he can pay back this amount. He is worried he might have to declare bankruptcy or make a consumer proposal.²⁸

[24] First, a penalty can be imposed even if there was no intent to defraud.²⁹ Second, there is no arguable case that the General Division didn't consider the mitigating circumstances.

[25] There is no arguable case that the General Division didn't consider the Claimant's testimony that he tried to correct his reports by calling Service Canada.³⁰ Before the General Division, the Claimant testified that he called Service Canada to say that he would pay back the benefits he got but wasn't entitled to while he was in training.³¹

[26] The General Division considered this point. But it didn't believe that the Claimant told Service Canada about his false statements on his own. The General Division decided that it was more likely that the Claimant called in March 2025 after he was asked to pay back the benefits he wasn't entitled to.³² So, the General Division found that this wasn't a mitigating circumstance. It was open to the General Division to make this finding.³³

[27] There is no arguable case that the General Division didn't consider the Claimant's financial hardship as a mitigating circumstance. The General Division said

²⁸ See the application to the Appeal Division at AD1-4.

²⁹ See the Federal Court of Appeal decision *Canada (Attorney General) v Bellil*, 2017 FCA 104 at para 14.

³⁰ See the General Division decision at AD1A-41 at para 189.

³¹ Listen to the General Division hearing recording at 35:00 and 30:00.

³² See the General Division decision at AD1A-41 at para 190.

³³ I note from the administrative file that Service Canada called the Claimant on February 20, 2025, at GD3-89. In that phone call, the Claimant acknowledged that he was in training and didn't report it. The notes about that call don't show that the Claimant voluntarily reported that he was in training before Service Canada asked him about it and investigated.

that his difficulties in paying back the penalty were considered as a mitigating circumstance.³⁴

[28] As for the Claimant going back to school, there is no arguable case that this was a mitigating circumstance that the General Division had to consider. First, the Claimant didn't argue before the General Division that, in his view, going back to school was a circumstance that should reduce the penalty. Second, a penalty is a deterrent to encourage claimants to make truthful statements.³⁵ The Claimant choosing to go back to school might be a great idea for him and his family. But because he didn't report that he was going back to school—and because it is mainly due to the many false statements he made throughout his entire training period that he was paid benefits he wasn't entitled to—there is no arguable ground to say that his choice to go back to school explains the wrongful act or justifies reducing the penalty.

– **I can't accept new evidence**

[29] I can't criticize the General Division for not considering factors that weren't raised before it.

[30] In his application to the Appeal Division, the Claimant said that he was in financial need because he had a new baby. His wife had little income from the QPIP, and he was worried about having to declare bankruptcy.

[31] The Claimant didn't raise these factors before the General Division—not in writing or orally. I listened carefully to the General Division hearing recording. The General Division repeatedly asked the Claimant to say whether there were any mitigating circumstances that he wanted the Tribunal to consider.³⁶ But he didn't say anything other than that it would be difficult to pay back the full amount being asked for. He also testified that he **wasn't** about to declare bankruptcy.³⁷ So, I can't criticize the

³⁴ See the General Division decision at AD1A-41 at para 187.

³⁵ See the Federal Court of Appeal decision *Canada (Attorney General) v Deen*, 2003 FCA 435 at para 17.

³⁶ Listen to the General Division hearing recording at 1:04:30.

³⁷ Listen to the General Division hearing recording at 1:03:35.

General Division for not considering the new baby, his wife's QPIP income, or him worrying about having to declare bankruptcy. That is because this evidence wasn't before the General Division.

[32] The Appeal Division can't consider new evidence that wasn't before the General Division when it gave its decision, with some exceptions. So, the screenshot showing the Claimant's debt rate on February 26, 2026, isn't accepted as evidence.³⁸ It doesn't fall under the exceptions allowing new evidence before the Appeal Division.³⁹

There is no arguable case that the General Division made an error that would allow me to intervene

[33] The Federal Court doesn't want the Appeal Division to review applications for permission to appeal in a mechanical way.⁴⁰ I carefully reviewed the file. But I see no arguable case that the General Division breached procedural fairness, went beyond or refused to use its jurisdiction, made an error of law, or based its decision on an important error of fact.

[34] The General Division decision is thorough. It seems to have applied the correct legal tests, decided all the issues that were before it, and given the Claimant an opportunity to be heard in a fair and unbiased way. The Appeal Division's role isn't to weigh the evidence again when there are no arguable grounds that the General Division made an error. So, I can't intervene and change the penalty amount as the Claimant would like.

[35] I would like to tell the Claimant that he can contact the Canada Revenue Agency (CRA). It is responsible for collecting the EI overpayment and can set up payment arrangements.⁴¹

³⁸ See the screenshot at AD1B-5.

³⁹ The Appeal Division can exceptionally accept new evidence if, for example, the evidence is related to a breach of procedural fairness, consists of general information, or shows a complete lack of evidence.

⁴⁰ See *Karadeolian v Canada (Attorney General)*, 2016 FC 615 at para 10.

⁴¹ See the contact information listed on the notice of debt at GD3-115.

[36] If he hasn't already done so, he can also ask the Commission to write off the overpayment—that is, to cancel it.⁴²

Conclusion

[37] Permission to appeal is refused. This means that the appeal won't go ahead.

Elsa Kelly-Rhéaume
Member, Appeal Division

⁴² See section 56 of the *Employment Insurance Regulations*.