



Citation: *DS v Canada Employment Insurance Commission*, 2025 SST 523

## Social Security Tribunal of Canada Appeal Division

# Decision

**Appellant:** D. S.  
**Representative:** A. S.

**Respondent:** Canada Employment Insurance Commission  
**Representative:** Julie Duggan

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**Decision under appeal:** General Division decision dated August 2, 2024  
(GE-24-2040)

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**Tribunal member:** Glenn Betteridge

**Type of hearing:** In Writing  
**Decision date:** May 20, 2025  
**File number:** AD-24-580

## Decision

[1] I'm allowing D. S.'s appeal because the General Division member wasn't impartial.

[2] I'm fixing this error by sending the case back to the General Division for a different member to reconsider. I have included directions to the General Division.

## Overview

[3] D. S. is the Claimant. I gave her permission to appeal a General Division decision. I found there was an arguable case she could win her appeal if she showed the General Division wasn't impartial. This is a procedural fairness error, sometimes called a natural justice error.

[4] The Canada Employment Insurance Commission accepts the General Division made the error. It says I should fix it by making the decision the General Division should have made.

[5] The Claimant argues the General Division member wasn't impartial. She gives many reasons for that position, including the reasons I identified. The Claimant says I should make the decision—I should allow the Claimant's appeal "dismissing any and/or all alleged overpayment(s) in full."<sup>1</sup>

[6] The parties' arguments show me they agree the General Division made a procedural fairness error. I accept their agreement. The evidence and law show me an informed person would think the General Division member would not decide the appeal fairly, whether consciously or unconsciously.

[7] I am sending the case back to the General Division because that's fair to the Claimant.

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<sup>1</sup> See AD6-16.

## Issues

[8] I will decide two issues.

- Did the General Division make a procedural fairness error?
- If it did, how should I (remedy) fix it?

### **A reasonably informed person would think the General Division member wasn't impartial—a procedural fairness error<sup>2</sup>**

[9] Impartial means unbiased, with an open mind. The Claimant had a right to have an impartial General Division member consider and decide her appeal. This is part of the duty of procedural fairness the General Division owed to the Claimant.<sup>3</sup>

[10] The legal test to show a tribunal member was biased or prejudged the case is difficult to meet. A tribunal member is presumed to be impartial. The person who alleges bias has to show that a reasonably informed person would think, in the circumstances, the decision-maker would not decide fairly.<sup>4</sup>

[11] The Claimant gave many reasons why the General Division member was biased. I have considered those arguments. At least two arguments—about paragraphs 36 and 106 of the decision—help to show an arguable case of bias.

[12] Given the following circumstances **taken together**, a reasonably informed person would think the General Division member didn't decide the Claimant's appeal fairly, whether consciously or unconsciously.

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<sup>2</sup> Section 58(1)(a) of the *Department of Employment and Social Development Act* says it's a ground of appeal where the General Division failed to observe a principle of natural justice.

<sup>3</sup> See *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69; and *Kuk v Canada (Attorney General)*, 2024 FCA 74.

<sup>4</sup> See *Committee for Justice and Liberty v National Energy Board*, [1978] 1 SCR 369 at page 394. The Court said the test is, "what would an informed person, viewing the matter realistically and practically—and having thought the matter through—conclude. Would he think that it's more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly?"

- During the hearing, the General Division member got stuck on her reconciliation of the Claimant's T4s. She repeatedly said this to the Claimant's representative, to the point of almost insisting on making this part of the hearing. But reconciling the T4s wasn't relevant to a legal issue the General Division had to decide—nor was the Claimant's argument about the T4s.
- In her decision, the General Division member made several statements or findings of fact that were unnecessary and not supported by the evidence.
  - At paragraphs 36 and 106, the member alleges the Claimant was using the appeal, and making procedural arguments, to avoid paying the debt. But the Claimant indicates in her documents the debt collection had already started.
  - At paragraph 37 the General Division member speculates about the Claimant's representative's state of mind and strategy in the appeal.
  - At paragraph 68 the General Division member draws a negative inference because the Claimant declined to give the General Division member her bank statements. But the new claim and payment of benefits under the new claim wasn't an issue before the General Division.
  - At paragraph 107 the General Division member states the Claimant and her representative didn't act honestly in the appeal process and tried to circumvent the appeal process. But this opinion isn't supported by the evidence, and had nothing to do with the issue in the appeal.

[13] The General Division process is adversarial—between a claimant and the Commission. The General Division should focus on the legal issues it has to decide, and the parties' positions and evidence relevant to those issues. The General Division should not make itself part of the dispute. In this appeal, the General Division member lost the presumption she was impartial when she inserted irrelevant issues and opinions into the hearing and decision.

[14] Because I have found the General Division made an error, the law gives me powers to fix that error.<sup>5</sup>

## **Fixing the error by sending the case back to the General Division**

[15] Although the parties want me to make the decision, I am sending the case back to the General Division for a different member to decide. I am doing this because it's fair to the Claimant, even if it will take more time.

[16] There are two reasons I think this is fair. First, the Claimant hasn't given evidence about the central issue in the appeal. Second, the law doesn't let me give the decision the Claimant is asking me to make.

[17] The Appeal Division can't hear new evidence. I am concerned the Claimant hasn't given evidence about the central issue in this appeal—did she ask the Commission to cancel her existing claim and start a new one? It's not clear why she hasn't given evidence.

[18] The Claimant might not be aware that only the Commission has the power to write off an overpayment or debt. So although she asked me to decide the appeal and write-off the overpayment, I don't have the power to give her that outcome.

[19] The Claimant also asks me to "aim to reach a decision that strikes a fair balance between the interests of all parties, without putting the claimant in a worse position."<sup>6</sup> Unfortunately, fairness and balancing aren't part of the law I would use to decide her case.

[20] The Claimant might not understand an important aspect of her case: When the Commission cancelled her existing claim and started a new claim, this meant she could get many more weeks of benefits, at a higher rate. In other words, it seems the

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<sup>5</sup> See section 59(1) of the DESD Act.

<sup>6</sup> See AD6-16.

Commission did this to benefit her. But she says she never asked the Commission to do this.

[21] If I decided her case, I would have to follow what the EI Act says about the start and end of a benefit period, cancelling a benefit period, and overpayment of benefits.<sup>7</sup> If she asked the Commission to cancel her existing claim and start a new one, the Commission had to create an overpayment for benefits she got under the cancelled claim. If she didn't, she might have an even bigger overpayment, for the benefits the Commission paid her under the new claim.

[22] I encourage the Claimant to get legal advice. I have already sent the Claimant and her representative information about free legal advice offered by legal aid-funded community clinics.

### **Directions to the General Division and suggestion for the Commission**

[23] The General Division should consider, and decide if necessary, the following issues:

- Did the Claimant ask the Commission to cancel her existing claim and start a new one?
- If so, did the Commission correctly calculate the resulting overpayment?
- If not, does the Claimant have an overpayment for the benefits the Commission paid her under the new claim? And how much is the overpayment?

[24] The Claimant's arguments show me the Claimant and her representative don't trust the Commission.<sup>8</sup> They dispute the Commission paid the Claimant benefits under

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<sup>7</sup> See sections 10(2), 10(3), 10(6), 10(7), and 43 of the *Employment Insurance Act*.

<sup>8</sup> The Claimant says the Commission made up notes, created a second claim, and alleges the Commission committed fraud and engaged in illegal and unlawful transactions.

the new claim—at least not all the benefits she was entitled to. They could check the Claimant's bank account statements. They say they should not have to do that.

[25] I encourage the Commission to consider sending the General Division proof of payment for both claims from the government payment system.<sup>9</sup>

## **Conclusion**

[26] I am allowing the Claimant's appeal and sending the case back to the General Division with directions, for a different member to reconsider.

Glenn Betteridge  
Member, Appeal Division

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<sup>9</sup> I am referring to the Public Works and Government Services Canada's *Standard Payment System*. In other appeals, the Commission has sent screenshots showing complete information about payments, including how the benefits were paid (paper cheque or direct deposit), when the payment was issued, when it was deposited/cashed, and bank account information.