[TRANSLATION]

Citation: *FB v Canada Employment Insurance Commission*, 2026 SST 230

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	F. B.
Respondent:	Canada Employment Insurance Commission
Representative:	Louis Gravel

Decision under appeal:	General Division decision dated September 29, 2025 (GE-25-2028)

Tribunal member:	Elsa Kelly-Rhéaume
Type of hearing:	Hybrid – in person and by videoconference
Hearing date:	February 19, 2026
Hearing participants:	Appellant Respondent Respondent's representative
Decision date:	March 23, 2026
File number:	AD-25-710

Decision

[1] The appeal is allowed. The General Division made an error of law by not asking the Canada Employment Insurance Commission (Commission) to get a ruling from the Canada Revenue Agency (CRA) on the dates the Claimant started and stopped working, her insurable earnings, and her hours of insurable employment. The General Division has to recalculate the weekly benefit rate. The matter returns to the General Division for reconsideration.

Overview

[2] The Claimant, F. B., applied for Employment Insurance (EI) regular benefits as of December 20, 2023.[1] A benefit period was established as of December 24, 2023. She got regular benefits from December 24, 2023, to February 17, 2024.[2] Then, she went back to work for her employer from February 19, 2024, to April 3, 2024. After that, she applied to renew a claim for regular benefits and got regular benefits from April 7, 2024, to August 24, 2024.[3]

[3] The Commission and the Claimant had many difficulties getting accurate information from her employer, Statistics Canada. The employer only issued a Record of Employment (ROE) from January 20, 2022, to December 30, 2022.[4] So, the Commission created an interim ROE (X00753759) based on a pay stub from the Claimant.[5] The Commission set the benefit rate at $650.

[4] After that, the Claimant's employer issued a ROE on April 19, 2024 (M06696400).[6] It covered the period from January 20, 2022, to March 26, 2024. The Claimant found inconsistencies in this ROE. For example, she got an amount during the pay period from March 26 to April 3, 2024, that wasn't on the ROE.[7] She stated that she

[1] See the benefit claim at GD3-7.
[2] See the table of benefits paid at GD3-33.
[3] See the table of benefits paid at GD3-33.
[4] See the Record of Employment (ROE) at GD3-15.
[5] See the pay stub at GD3-18.
[6] See the ROE at GD3-35.
[7] See the notes at GD3-37.

worked until April 3, 2024, not March 26, 2024, as stated in the ROE.[8] Many pay services of the Canadian government provided inconsistent information on this matter.[9] The Public Service Pay Centre (Pay Centre) initially contradicted the Claimant's statements.[10] But Statistics Canada's pay service later confirmed that the Claimant had in fact worked until April 3, 2024.[11]

[5] Another interim ROE (X00817202) was created on October 2, 2024, covering the period from January 9, 2023, to March 15, 2023.[12] At that point, the Commission used the ROEs on file to recalculate the Claimant's benefit rate. The Commission decided to lower her weekly benefit rate from $650 to $505.[13] That decision resulted in the Claimant being overpaid, and she got a notice of debt of $3,770.[14] The Claimant asked for a reconsideration of the decision to lower her benefit rate to $505. She wrote that her file was unclear, that her employer was hard to reach, and that she didn't get a ROE showing all her insurable hours.[15]

[6] The Commission had many conversations with the Pay Centre to try to understand what insurable hours were worked and what insurable earnings were received during the qualifying period. At the same time, the Claimant was trying to access her pay stubs but could not access them online. In March 2025, a Statistics Canada pay advisor sent the Commission an Excel file. In this nine-page file, the advisor showed many amounts, with overlapping periods, and many government codes.[16] The Commission contacted the advisor to say that the file wasn't clear. The Commission explained that the insurable earnings and hours worked for each pay period had to be clear. So, the advisor sent a second Excel table.[17]

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[8] See the phone notes at GD3-38.
[9] See the notes taken at GD3-70. They said that an agent from the Public Service Pay Centre told the Commission that the last day the Claimant was paid was April 3, 2024. But another agent said the last day she was paid was March 26, 2024.
[10] See the phone call notes at GD3-46.
[11] See the email from Statistics Canada's pay service at GD3-84.
[12] See the ROE at GD3-47.
[13] See the notice of decision at GD3-49.
[14] See the notice of debt at GD3-51.
[15] See the reconsideration request at GD3-54.
[16] See the Excel file at GD3-74 to GD3-82.
[17] See the table at GD3-85.

[7] The Commission used this information to review the Claimant's benefit rate again and lower it. The Commission replaced its initial decision with one setting the Claimant's weekly benefit rate at $487.[18]

[8] The Claimant appealed that decision to the General Division. The General Division dismissed her appeal. It decided that the Commission had correctly calculated the weekly benefit rate.

[9] The Claimant then asked for permission to appeal to the Appeal Division. I gave permission to appeal.

[10] The Claimant argues that the General Division made an important error of fact when it calculated the insurable hours, the best weeks—the weeks where her insurable earnings were highest—and the weekly benefit rate.[19] She criticizes the General Division for relying on information from the Pay Centre even though that pay service didn't serve her employer, Statistics Canada. She also argues that the ROEs were full of errors and didn't match the pay stubs that she had provided the General Division.

[11] Before the Appeal Division, the Commission said that it carefully analyzed the file. In the Commission's view, this review of the General Division decision showed an important error of fact in setting the weekly benefit rate at $487.[20]

Preliminary matter

I don't accept the new evidence the Claimant provided

[12] The Claimant wanted to provide the Appeal Division a document that was created after the General Division decision had been given. The document is an email dated October 23, 2025, that said the Pay Centre didn't serve Statistics Canada.[21]

[18] See the notice of decision at GD3-103.
[19] See the Claimant's submissions at AD1-3.
[20] See the Commission's arguments at AD5-6.
[21] See the email at AD8-2.

[13] The Appeal Division normally doesn't accept new evidence. There are some exceptions to this rule, but this document isn't one of them.[22]

[14] I explained to the Claimant that if the General Division reconsiders the matter, it has the authority to accept new evidence.

Issues

[15] The issues are the following:

a) Did the General Division make an error of law by not asking the Commission to get a ruling from the CRA on the Claimant's insurable earnings?

b) If so, what is the appropriate remedy?

Analysis

[16] The appeal has to relate to one of the grounds of appeal set out in the *Department of Employment and Social Development Act* (DESD Act).[23] This means that I have to decide whether the General Division made one of the following errors:

- The General Division failed to follow the principles of procedural fairness.
- The General Division made an error of jurisdiction.
- The General Division made an error of law.
- The General Division made an important error of fact.[24]

[17] Both parties agree that the General Division made an important error of fact. But I only need to identify one error in the General Division decision to intervene.

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[22] The Appeal Division can accept new evidence in exceptional cases if, among other things, it relates to general information, it shows a complete lack of evidence, or it concerns a breach of procedural fairness.
[23] See section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).
[24] See section 58(1) of the DESD Act.

The General Division made an error of law by not asking the Commission to get a ruling from the CRA on the Claimant's insurable earnings

[18] At the General Division hearing, the General Division member stated that the Commission relied on the Claimant's insurable earnings to set the benefit rate.[25] The General Division upheld the weekly benefit rate that the Commission had calculated. But because the Claimant was disputing the insurable earnings the employer reported, the General Division should have asked the Commission to get a ruling from the CRA on that issue. The General Division didn't have jurisdiction to decide the insurable earnings.

[19] It seems from the reconsideration file and the General Division decision that this file had inconsistent evidence about the Claimant's insurable earnings and the hours of insurable employment she worked.

[20] For example, the employer initially and incorrectly stated that the Claimant stopped working for Statistics Canada on March 26, 2024, when in fact it was April 3, 2024.

[21] Also, the Commission repeatedly had to call the employer to get corrections because the information on the ROE didn't match. For example, the $4,483.22 in vacation pay that the Claimant got didn't appear on ROE M06696400.[26] The Commission also noted that the pay stubs didn't seem to match the ROE.[27]

[22] At the time of the General Division hearing, the Claimant was still disputing the information in the Excel file that her employer provided. The Claimant provided the General Division a document that compared her pay stubs with the earnings that the employer reported.[28] She says that 33 of the pay periods the employer provided in the Excel file didn't match the amounts shown on her pay stubs.

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[25] Listen to the recording of the General Division hearing at 0:05:00.
[26] See the notes at GD3-68.
[27] See the notes at GD3-68.
[28] See the Claimant's submissions at GD12-2.

[23] In its written arguments before the Appeal Division, the Commission stated that the Claimant wasn't disputing the insurable earnings she got during her qualifying period as a whole.[29] So, the Commission wrote in its submissions that there was no need to ask the CRA for a ruling because the total insurable earnings weren't being disputed.[30] The Commission also wrote that the CRA can decide the length of insurable employment, the amount of the insurable earnings, and the number of hours of insurable employment, but that it was up to the Commission to allocate the insurable earnings to calculate the benefit rate.[31] So, the Commission considered that the General Division didn't make an error by not asking the Commission to get a ruling from the CRA.

[24] But at the hearing before the Appeal Division, the Claimant clearly stated that she had been disputing the insurable earnings from the start of her file. She said that if the earnings for one week were inaccurate based on the employer's information, this would automatically affect the total amount of the insurable earnings received. I also note that in her notice of appeal to the General Division, the Claimant wrote: [translation] "I disagree with how the insurable hours were calculated in my file."[32] So, it seems on the face of the file before the General Division, that the Claimant was disputing parts of the insurability of her employment under section 90 of the *Employment Insurance Act* (EI Act).

[25] At the Appeal Division hearing, the Commission seemed to acknowledge that it might be possible to ask for a ruling from the CRA because the Claimant clarified that she was in fact disputing her insurable earnings. The Commission agrees that the CRA has the authority to decide her insurable earnings.

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[29] See the Commission's arguments at AD5-5.
[30] See the Commission's arguments at AD5-5.
[31] See the Commission's arguments at AD5-5.
[32] See the notice of appeal to the General Division at GD2-51.

– **The CRA has exclusive authority to decide the insurable earnings**

[26] The DESD Act says that if a question specified in section 90 of the EI Act arises in the consideration of an appeal, it has to be determined by the CRA.[33] Section 90 of the EI Act deals in particular with:

- how long an insurable employment lasts, including the dates on which it begins and ends[34]
- what is the amount of any insurable earnings[35]
- how many hours an insured person has had in insurable employment[36]

[27] The Federal Court of Appeal has said that the CRA has exclusive jurisdiction to decide matters related to the insurability of employment, as set out in section 64(3) of the DESD Act.[37] The Federal Court has also decided in a recent decision that section 64(3) of the DESD Act provides that questions of employment insurability arising in an appeal before the Social Security Tribunal (SST) **must** be resolved by the CRA.[38] It follows that it is an error of law not to get a ruling from the CRA on a question that falls in its exclusive jurisdiction.[39]

[28] So, I find that the General Division made an error of law. It needed to ask the Commission to get a ruling from the CRA on the length of the insurable employment, including the start and end dates, the insurable earnings, and the number of hours worked in insurable employment.[40] It was clear from the file that the Claimant was disputing her insurable hours and her insurable earnings. It was also clear that these

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[33] See section 64(3) of the DESD Act.
[34] See section 90(1)(b) of the *Employment Insurance Act* (EI Act).
[35] See section 90(1)(c) of the EI Act.
[36] See section 90(1)(d) of the EI Act.
[37] See the Federal Court of Appeal decisions *Chen v Canada (Attorney General)*, 2025 FCA 18 at para 7; and *Hrabovskyy v Canada (Attorney General)*, 2025 FC 1565 at para 36.
[38] See *Gloglo v Canada (Attorney General)*, 2024 FC 1923 at para 30.
[39] See *AB v Canada Employment Insurance Commission*, 2025 SST 269. In that decision, the Appeal Division found that the General Division made an error of law by not asking the Commission to get a ruling from the Canada Revenue Agency (CRA) on the number of hours of insurable employment. The Appeal Division said this was an error because the Claimant had told the General Division that he believed the number of insurable hours the Commission recognized was incorrect.
[40] The Commission can ask the CRA to issue this type of ruling under section 90 of the EI Act.

issues were in dispute in the file because the Claimant had been disputing the information in her many ROEs from the start.

[29] Because I have found that the General Division made an error of law, I can intervene.

Remedy

I am referring the matter back to the General Division for reconsideration

[30] Because the General Division made an error of law, I have to decide the appropriate remedy to correct that error.

[31] The DESD Act says that the Appeal Division may, among other things, refer the matter back to the Employment Insurance Section for reconsideration in accordance with any directions that the Appeal Division considers appropriate.[41]

[32] At the hearing before the Appeal Division, the Claimant said that she wanted me to give the decision that should have been given. She would like me to write off the overpayment considering the errors made in her file.

[33] The Commission wants me to give the file back to the General Division for reconsideration. The Commission also wants the employer to provide more detailed information about the weeks the Claimant worked, as well as some premiums and bonuses mentioned in the Excel table that it provided. At the hearing before the Appeal Division, the Commission stated that it had reviewed the information the employer provided. **The Commission made a calculation based on the information on file and found that the best 21 weeks used in the General Division decision didn't match the information the employer provided.** So, it is of the view that the General Division should recalculate the weekly benefit rate using the most accurate information possible. Because the Claimant is also disputing the insurable earnings, the Commission also acknowledged that it might be necessary to get a CRA ruling first.

[41] See section 59(1) of the DESD Act.

[34] I don't have the authority to write off an overpayment. It is well established that only the Commission has the authority to write off—or cancel—an overpayment.[42] The Federal Court has already decided that the SST doesn't have jurisdiction to review the Commission's decisions on whether to write off an overpayment.[43]

[35] But the SST does have the authority to calculate the weekly benefit rate that the Claimant is entitled to and to calculate the amount of any overpayments. And because the Claimant is disputing the insurable earnings that the employer says she got during the qualifying period, the CRA has to rule on that amount first. **I encourage the Commission to ask the CRA to rule on the Claimant's start and end dates, the insurable earnings, and the hours of insurable employment as soon as it gets this decision.**

[36] The General Division can also consider the submissions the Commission made before the Appeal Division that the General Division's calculation is wrong. At the hearing before the Appeal Division, the Commission's representative stated that by recalculating using the employer's information, the weekly benefit rate would be higher than $487. **The Commission stated that the calculation method the General Division used was wrong.** It seems that the General Division chose the best pay periods. But the EI Act requires using the 21 best weeks—not pay periods. The Commission's representative didn't want to give the exact weekly benefit rate based on its recalculation because he believes that the employer's information isn't exact enough. **So, I encourage the Commission to provide the General Division with its calculation of the benefit rate the Claimant is entitled to for reconsideration.**

[37] As I explained earlier, the Appeal Division normally can't hear new evidence. This means that the General Division will have to analyze the CRA's ruling. That is why I have to refer this matter back to the General Division. It is the General Division that will be able to hear the matter again and that will have the important task of deciding the Claimant's 21 best weeks and calculating the resulting weekly benefit rate. Depending

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[42] The Commission can write off an amount owing in some cases, as out in section 56 of the *Employment Insurance Regulations*.
[43] See the Federal Court decision *Arksey v Canada (Attorney General)*, 2019 FC 1250 at para 35.

on the outcome of this exercise, the overpayment the Claimant is being asked to pay back might be lowered or removed.

Additional remarks

– **The Claimant questions a notice of debt because the explanation isn't clear**

[38] The administrative file before the General Division has two notices of debt:

- A notice of debt issued on October 8, 2024, for $3,770 at GD3-51
- A notice of debt issued on March 11, 2025, for $4,017 at GD3-106

– **Debt created because the weekly benefit rate was lowered**

[39] The first debt of $3,770 is explained in a table the Commission created at GD3-53. The overpayment happened when the Commission reviewed the Claimant's benefit rate, lowering it from $650 to $505.

[40] Then, an additional amount of $468 was added to the Claimant's overpayment when her weekly benefit rate was reviewed a second time, lowering it from $505 to $487. The explanatory table is found at GD3-108.

– **Debt whose source is unclear to the Claimant**

[41] A notice of debt for $4,017 was issued on March 11, 2025. It isn't clear whether this notice of debt was the combination of the $3,770 debt and the $468 debt. At the hearing before the Appeal Division, the Commission's representative said that the $4,017 could be explained by the fact that the Claimant made some payments between the time the $3,770 notice of debt was issued and between the time the $4,017 one was issued. But there is no evidence of this in the General Division file.

[42] And the Commission's submissions before the General Division contradict this explanation. In its written arguments at GD4-8, the Commission stated that an additional notice of debt was sent to the Claimant and that this notice included the debt resulting from the allocation of the amounts received when she was separated from her job. The Commission stated in its arguments to the General Division that the Claimant didn't ask

for a reconsideration of the decision allocating the amounts received when she was separated from her job. That had resulted in an overpayment. To support this claim, the Commission referred to Service Canada notes.[44] The notes said that on March 5, 2025, vacation pay and a pay in lieu of notice were allocated from March 31, 2024, to June 15, 2024.[45] But it isn't clear what overpayment this allocation caused.

[43] These notes also don't show any communication with the Claimant to tell her that a new overpayment had been calculated and that she could have disputed it. She raised this issue before the General Division. At the General Division hearing, she asked why the debts were added together.[46] She said it was impossible for her to owe about $6,000, and that she didn't understand how this amount had been calculated.[47]

[44] The Commission is responsible for explaining the validity of the overpayment notices it has issued. I encourage the Commission to review the file to see whether a decision on the allocation of the amounts the Claimant got when she was separated from her job was communicated to her. If it was, the Claimant can ask for that decision to be reconsidered. If it wasn't, the Commission will have to explain its decision and how this overpayment was created.

Conclusion

[45] The appeal is allowed. The General Division made an error of law by not asking the Commission to get a ruling from the CRA. I am referring the matter back to the General Division for reconsideration. The General Division has to recalculate the weekly benefit rate the Claimant is entitled to.

Elsa Kelly-Rhéaume
Member, Appeal Division

[44] See the Commission's arguments to the General Division at GD4-7.
[45] See the Service Canada notes at GD3-101.
[46] Listen to the recording of the General Division hearing at 00:49:43.
[47] Listen to the recording of the General Division hearing at 00:36:25.