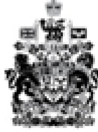

Citation: *Canada Employment Insurance Commission v NP*, 2026 SST 233

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	Canada Employment Insurance Commission
Representative:	Julie Duggan
Respondent:	N. P.

Decision under appeal:	General Division decision dated December 18, 2025 (GE-25-3226)

Tribunal member:	Stephen Bergen
Type of hearing:	Teleconference
Hearing date:	March 13, 2026
Hearing participants:	Appellant Respondent's representative
Decision date:	March 25, 2026
File number:	AD-26-26

Decision

[1] The appeal is allowed. The General Division made an error of law. I am returning the matter to the General Division to reconsider the penalty and notice of violation issues..

Overview

[2] The Appellant is the Canada Employment Insurance Commission, which I will call the Commission. N. P. is the Respondent. I will call her the Claimant because this application is about her claim for Employment Insurance (EI benefits).[1]

[3] The Claimant initially applied for fifteen weeks of maternity benefits and fifteen weeks of standard parental benefits. Her benefits started on December 17, 2023. The Commission did not require her to file claim reports to obtain these benefits because she agreed to report any income she might receive.

[4] The Commission later found that the Claimant had returned to work full time on May 5, 2024, and continued to work for the balance of her benefit period. It reconsidered her claim and determined that she received 30 weeks of benefits to which she was not entitled. This meant that the Claimant would have to repay those benefits.

[5] The Commission also determined that the Claimant had knowingly made fifteen false representations related to fifteen claim reports for the 30 weeks of benefits. It imposed a penalty of $5000.00 and declared a serious violation.

[6] The Claimant asked the Commission to reconsider the penalty and notice of violation. The Commission reduced the penalty to $3750.00 due to mitigating circumstances.

[7] The Claimant appealed to the General Division which upheld the overpayment but allowed the Claimant's appeal on the penalty and notice of violation. The General

[1] The Leave to Appeal decision mistakenly described the Claimant as the Applicant, and the Commission as the Respondent (paragraph 2 of the Leave to Appeal decision).

Division found that the Commission did not show that the Claimant knowingly made false or misleading statements or representations.

[8] The Commission appealed the General Division's decision to the Appeal Division.

[9] The Appeal is allowed. The General Division made an error of law. I am returning the matter to the General Division to reconsider.

Preliminary matters

[10] The Commission appealed the General Division decision in relation to the Claimant's penalty and notice of violation only. The Claimant had not disputed her earnings or allocation at the General Division, and the General Division confirmed the Commission's decision on those issues. The Commission's appeal does not challenge the General Division's decision on the overpayment resulting from the allocation.

[11] So, I have not considered the earnings or allocation issues or the General Division's decision on the overpayment.

Issues

[12] The issues in this appeal are

a) Did the General Division make an error of law by not considering whether the Claimant knowingly failed to inform the Commission that she had returned to work and had earnings?

b) Did the General Division make an error of fact by failing to consider evidence that the Claimant made false statements in her benefit application and renewal application?

Analysis

General legal principles for appeals to the Appeal Division

[13] The Appeal Division may only consider errors that fall within one of the following grounds of appeal:

a) The General Division hearing process was not fair in some way.

b) 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 (error of jurisdiction).

c) The General Division made an error of law when making its decision.

d) The General Division based its decision on an important error of fact.[2]

Error of law—failure to consider omissions.

[14] The General Division allowed the Claimant's appeal of her penalty and notice of violation. It decided that the Commission had failed to prove that she had knowingly made false statements.

[15] Because the Claimant was applying for maternity and parental benefits, she had elected to be exempt from filing claim reports. The General Division reasoned that she could not have made false statements if she did not make any statement at all.

[16] The General Division made an error of law.

[17] The General Division said that it was persuaded by the reasoning in ZE, which also considered a claimant who did not file claim reports and did not report income. ZE found that the Claimant's omission was not a "false statement."[3]

[18] However, ZE was concerned with the application of the reconsideration limitation period under section 52(5) of the EI Act, which is expressly extended where a party

[2] This is a plain-language version of the three grounds. The full text is in section 58(1) of the *Department of Employment and Social Development Act* (DESDA).
[3] See *Canada Employment Insurance Commission v ZE*, 2025 SST 855.

makes false statements. Section 52(5) does not say the limitation is also extended for omissions.

[19] The penalty and violation provisions of the EI Act do not necessarily require a false statement. They may also be engaged by omissions. Section 38(1)(c) says that a penalty may also be imposed where a claimant, "knowingly **failed to declare** to the commission all or some of the claimant's earnings for a period… for which the claimant claimed benefits." Violations are only considered in circumstances where a penalty is imposed, so they are also justified by **either** false statements **or** the failure to report earnings.[4]

[20] The Commission's July 17, 2025, decision stated that the Claimant knowingly made fifteen false representations in fifteen reports to claim benefits, so the General Division's focus on false statements is understandable.[5] However, it failed to apply the provision of the EI Act that applies in the circumstances, and it failed to consider whether the Commission's penalty was justified by her omission. This is an error of law.

Error of fact—claimed benefits on the original and renewal applications

[21] The Commission states that the Claimant's application requested more benefits than she would be entitled to, given her anticipated return-to-work date. It argues that these requests are false statements. And it argues that the General Division made an error of fact by ignoring or misunderstanding the Claimant's benefit requests in her applications.

[22] I disagree. The General Division did not make an error of fact by ignoring or misunderstanding the Claimant's benefit requests.

[23] Claimants are not required to self-adjudicate their entitlement. It is the Commission's job to adjudicate. While the Claimant may have requested more weeks of

[4] See section 7.1(4) of the EI Act.
[5] See GD3-82.

benefits than would be justified by the circumstances, her request for benefits is just that—a request. It is not a statement of fact, on which the Commission may rely.

[24] If the Commission fails to verify a claimant's entitlement to all the benefits they requested, it may demand that they pay back any benefits that they should not have received. But it cannot penalize them for simply asking for benefits.

[25] The General Division did not make an error of fact by failing to consider evidence of the Claimant's benefit requests.

Remedy

[26] Since I have found an error in the General Division's decision, I have the power to send the matter back to the General Division to reconsider, or I may make the decision that the General Division should have made.[6]

[27] The Commission suggests that the record is complete and asks that I make the decision the General Division should have made. The Claimant also asks that I make the decision.

[28] Despite the agreement of the parties, I have decided to return the matter to the General Division. So, I will explain why.

[29] The Claimant's testimony at the General Division was brief, with little detail provided or requested. As it turns out, the General Division concluded that the Commission needed to show that the Claimant had made false statements. It did not consider whether she had failed to declare earnings. It is possible that it limited the scope of its inquiry based on its view of the law.

[30] Whatever the reason, the Claimant did not have a fair opportunity to fully explain how she came to believe she was no longer receiving parental benefits after declaring she was returning to work on May 5.

[6] See section 59(1) of the DESDA.

[31] I will give some examples.

[32] Whether a claimant fails to declare their earnings while receiving benefits, *knowingly,* is a subjective question. Answering this question depends to a large degree on whether a claimant is believed about what they say they knew. The General Division has the advantage of interacting with, and observing, the claimant as they give evidence. It can ask clarifying questions or challenge inconsistencies. It is generally better positioned than the Appeal Division to assess credibility.

[33] But evaluating the Claimant's subjective knowledge may also involve an evaluation of her mental health. She argued that she was suffering from post-partum depression at the time and said that she paid little attention to what was being deposited to her account after May 5 when she returned to work. If she were significantly depressed during this period, this would be a relevant consideration when assessing what she says she knew or understood at the time.

[34] There is presently no evidence confirming that the Claimant was diagnosed or treated for post-partum depression, or the manner in which it affected the Claimant.

[35] The Claimant also testified that she followed the advice of colleagues that she should refile her application when she decided to extend her parental leave. She said that she reported that her return-to-work date had changed. When she spoke to the Commission on November 5, 2025, she said that she had "declared" her return-to-work date when she re-filed. If the Claimant actually declared her return-to-work date, believing that this satisfied her reporting obligation to the Commission, this would be relevant.

[36] However, the Commission apparently challenged the Claimant's explanation, telling her that the renewal application does not ask for the date of the planned return to work.[7] In the Claimant's initial application, she completed the anticipated return-to-work

[7] See GD3-93.

date in the Last Employer Information section. The renewal application in the file does not have such a section.

[37] At the same time, the Commission includes in the reconsideration file only what it deems relevant. I cannot be sure that the form in the reconsideration file is the complete form or that it accurately represents all the questions or answers presented to the Claimant in the online process.

[38] The Claimant has not given details of the process by which she says she revised her return-to-work date. I do not know it the Claimant could have updated her revised return-to-work date in her renewal application, or through some other online form or process associated with the application.

[39] I am returning the matter to the General Division because I am not satisfied that I have all the evidence I need to make a decision or that the Claimant had a full and fair opportunity to supply it.

Conclusion

[40] The appeal is allowed. The General Division made an error of law by failing to consider whether the Claimant knowingly failed to report her earnings while receiving benefits.

[41] I am returning the matter to the General Division for reconsideration of the Claimant's penalty and notice of violation.

[42] In the appeal to the Appeal Division, the Commission proposed to reduce the penalty to $2000.00 because of additional mitigating circumstances that it discovered in the appeal process. If the General Division accepts that the Claimant knowingly omitted to report income while receiving benefits, it may wish to consider this proposal.

Stephen Bergen
Member, Appeal Division