



Citation: *OS v Canada Employment Insurance Commission*, 2025 SST 138

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

# **Decision**

**Appellant:** O. S.

**Respondent:** Canada Employment Insurance Commission  
**Representative:** Claude Germain

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**Decision under appeal:** General Division decision dated November 28, 2024  
(GE-24-3692)

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**Tribunal member:** Solange Losier

**Decision date:** January 13, 2025

**File number:** AD-24-820

## Decision

[1] The appeal is allowed. The parties agree that the General Division made a reviewable error. The matter will return to the General Division for reconsideration.

## Background

[2] O. S. is the Claimant in this case. He applied for benefits and got Employment Insurance Emergency Response Benefit (EI ERB).

[3] The Canada Employment Insurance Commission (Commission) first decided that the Claimant was overpaid EI ERB. This resulted in an overpayment of benefits. However, they ended up reviewing the claim and determined that the Claimant was entitled to one additional week of EI ERB, so they reduced the overpayment.

[4] The General Division concluded the same and dismissed his appeal. <sup>1</sup>The Claimant applied to the Appeal Division and got permission to appeal. The parties agree on the outcome of the appeal.<sup>2</sup>

## The parties agree on the outcome of the appeal

[5] The Claimant and Commission agree that the Tribunal made a reviewable error.<sup>3</sup> They agree that the file should be returned to the General Division for reconsideration.

### – I accept the parties' agreement

[6] The General Division dismissed the Claimant's appeal. In its decision, it identified that the audio recording was started at the scheduled time, but there was a technical problem and it didn't record.<sup>4</sup>

[7] Before the Appeal Division, the Claimant argued that none of his "talking points" were taken into account or presented in the General Division's decision.<sup>5</sup> He objects to

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<sup>1</sup> See General Division decision at pages AD1A-1 to AD1A-6.

<sup>2</sup> See pages AD5-1 to AD5-5.

<sup>3</sup> See section 58(1)(c) of the *Department of Employment and Social Development* (DESD Act).

<sup>4</sup> See paragraph 8 of the General Division decision.

<sup>5</sup> See Claimant's position at page AD1-5.

the fact that the General Division hearing was not recorded because it would provide proof of what he said.

[8] The Commission submits that without the hearing recording there is no way to validate the Claimant's testimony and arguments made at the hearing and whether the General Division considered or addressed them.<sup>6</sup> Because of that, the Commission agrees that the General Division may have overlooked important information and erred in fact. It says that for natural justice reasons, the matter should go back to the General Division for reconsideration.

[9] As I noted in my leave decision, the failure to record the proceedings doesn't necessarily invalidate the proceedings or the decision made by the General Division.<sup>7</sup> The hearing wasn't recorded due to technical issues, it wasn't intentional.

[10] However, the Claimant appears to be arguing that the General Division overlooked some of his testimony and arguments made at the hearing and that could be a reviewable error. Without the audio recording, I agree with the parties that it is difficult to confirm what information was overlooked and whether it was important to the General Division's key findings.

[11] I am accepting the parties' agreement. I've given consideration to the fact that the parties in this case both agree that the General Division made a reviewable error and agree on the outcome of this appeal.

## Conclusion

[12] The Claimant's appeal is allowed. The parties agree that the matter should go back to the General Division for reconsideration.

Solange Losier  
Member, Appeal Division

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<sup>6</sup> See Commission's position at pages AD3-1 to AD3-5.

<sup>7</sup> See *Patry v Canada (Attorney General)*, at paragraph 10.