



Citation: *BH v Minister of Employment and Social Development*, 2026 SST 182

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: B. H.
Representative: R. K.
Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated November 26, 2025
(GP-25-854)

Tribunal member: Glenn Betteridge
Decision date: March 10, 2026
File number: AD-26-54

Decision

[1] Leave (permission) to appeal is refused. This means the appeal won't go forward.

Overview

[2] B. H. is the Claimant. He has applied for permission to appeal a General Division decision.

[3] In July 2018, the Claimant was seriously injured in a workplace accident. In February 2024, he applied for a *Canada Pension Plan* (CPP) disability pension. The Minister granted him a disability pension, starting March 2023. This start date was based on when he applied, and when the Minister deemed him to be disabled.

[4] The Claimant appealed the start date to the General Division. He wanted more months of retroactive pension. He argued the Minister should treat his disability application as if he made it earlier because he was incapable of applying earlier. Sections 60(9) and (10) of the CPP give the Minister this power.

[5] The General Division dismissed his appeal. It found he didn't meet the CPP test for incapacity. So it could not treat his application as if he made it earlier. Or change his deemed disability date of November 2022.

[6] The Claimant argues the General Division misapplied the incapacity test to the facts. I gave him extra time to give additional reasons.¹ He didn't respond.

[7] Unfortunately for the Claimant, I can't give him permission to appeal the General Division decision. He hasn't shown an arguable case the General Division made an error. And he didn't set out new evidence in his application to the Appeal Division (application).

¹ See the Tribunal's letter to the Claimant, dated February 3, 2026. The deadline to respond was February 16, 2026. The Claimant didn't respond before I finalized this decision.

Issues

[8] I will decide three issues.

- Did the Claimant set out new evidence in his application to the Appeal Division?
- Is there an arguable case the General Division made a factual error or a legal error?
- Is there an arguable case the General Division made an error of mixed fact and law (a mixed error) by misapplying the incapacity test to the medical and functional evidence?

I can't give the Claimant permission to appeal

The permission to appeal test

[9] I should give the Claimant permission to appeal if he raises an arguable case the General Division made one of these errors

- didn't respect natural justice
- misunderstood or improperly used its decision-making authority
- made a legal error, a factual error, or a mixed error of fact and law in making its decision²

[10] An arguable case is one with a reasonable chance of success.³

[11] I can also give the Claimant permission to appeal if he set out new evidence in his application.⁴ New evidence means evidence that wasn't before the General Division.

² See sections 58.1(a) and (b) of the *Department of Employment and Social Development Act* (DESD Act).

³ See *Abramowitz v Canada (Attorney General)*, 2024 FC 1793 at paragraph 32; *Kryklywicz v Canada (Attorney General)*, 2026 FC 36 at paragraph 64.

⁴ See section 58.1(c) of the DESD Act.

The Claimant hasn't set out new evidence

[12] In the new evidence section of the application form, the Claimant writes "see attached," referring to two pages of reasons for appeal.⁵ But in those reasons he doesn't set out any new evidence. He only refers to evidence the General Division had.

[13] So I can't give him permission to appeal based on new evidence.

The Claimant's argument isn't about a factual error or a legal error

[14] The Claimant says the General Division made findings of fact that weren't supported by the medical and functional evidence.⁶ He also argues the decision discloses arguable errors of law and fact.⁷

[15] Reading the Claimant's reasons closely, I understand he's arguing the General Division made an error applying the law to the facts. In other words, a mixed error. He hasn't pointed to a finding of fact that is unsupported. He hasn't referred to evidence the General Division ignored or misunderstood. And he agrees the General Division applied the correct legal test.⁸ His arguments are about how the General Division weighed (in other words, assessed) the evidence.

[16] The Claimant's representative isn't a legal professional. So I reviewed the General Division decision alongside the law, and the evidence from the documents and the hearing recording. I didn't find an arguable case the General Division made a factual error or legal error.

No arguable case the General Division made a mixed error

– The legal test for a mixed error

[17] The General Division makes a mixed error when it should have arrived at a different outcome by applying the correct legal test to the relevant evidence.⁹ The

⁵ See AD1-4.

⁶ See AD1-9.

⁷ See AD1-10.

⁸ See AD1-10.

⁹ See *Del Ridge Homes Inc v Ledgemark Homes Inc*, 2022 FC 566, at paragraph 27, citing *Teal Cedar Products Ltd v British Columbia*, 2017 SCC 32, at paragraphs 43, 44; *Quadir v Canada (Attorney*

Appeal Division has described a mixed error as an error in the way the General Division applied the law to the facts.¹⁰

[18] To get permission to appeal, a person has to show an arguable case. The Appeal Division has given permission to appeal based on a mixed error when there is an arguable case the General Division:

- gave too little or too much weight to certain evidence, or
- considered the relevant evidence but didn't explain how it assessed that evidence and applied the legal test.¹¹

[19] Under the old test, the Appeal Division refused permission to appeal based on a mixed error when a person was only rearguing the case or disagreeing with the result.¹²

– **The Claimant hasn't shown an arguable case of a mixed error**

[20] The Claimant argues the General Division misapplied the CPP incapacity test to the evidence. He says the General Division didn't adequately analyze whether his cognitive and psychological impairments affected his capacity to form or express the intention to apply.¹³ He gives three examples of the General Division's error:

General), 2018 FCA 21 at paragraph 9. A starting point for understanding a mixed error is understanding what it isn't. When a distinct legal error or a distinct factual error can be identified in an argument, that argument is about a legal error or a factual error—not a mixed error. See the discussion of extricable legal or factual errors in *Garvey v Canada (Attorney General)*, 2018 FCA 118 at paragraph 9; *Del Ridge Homes Inc v Ledgemark Homes Inc*, 2022 FC 566, at paragraph 27.

¹⁰ See the Leave to Appeal Decision in *LB v Minister of Employment and Social Development and EB*, AD-23-427 (Sellar; June 1, 2023); Leave to Appeal Decision in *GP v Minister of Employment and Social Development*, AD-24-51 (Sellar; January 19, 2024); Leave to Appeal Decision in *MH v Minister of Employment and Social Development*, AD-23-604 (Sellar; June 23, 2023).

¹¹ See the Leave to Appeal Decision in *LB v Minister of Employment and Social Development and EB*, AD-23-417 (Sellar; June 1, 2023); Leave to Appeal Decision in *GP v Minister of Employment and Social Development*, AD-24-51 (Sellar; January 19, 2024); Leave to Appeal Decision in *MH v Minister of Employment and Social Development*, AD-23-604 (Sellar; June 23, 2023).

¹² See *CG v Minister of Employment and Social Development*, 2015 SSTAD 694 at paragraph 20; *IM v Minister of Employment and Social Development*, 2015 SSTAD 655 at paragraph 14. Under the previous permission to appeal test, the Appeal Division granted permission based on mixed errors—until the courts decided it didn't have the power to do that. See *Quadir v Canada (Attorney General)*, 2018 FCA 21; *Garvey v Canada (Attorney General)*, 2018 FCA 118.

¹³ See AD1-10.

- decision concludes that the evidence demonstrates only a need for assistance, reminders, or additional time to apply, without adequately analyzing whether the accepted cognitive and psychological impairments affected his capacity to form or express and intention to apply
- placed disproportionate weight on isolated activities (such as signing documents or attending medical appointments) to infer capacity, while failing to reconcile this with the medical evidence and evidence of functional dependence and impaired decision-making
- failed to address how illiteracy and communication barriers interacted with his impairments when determining whether he was incapable of expressing an intention to apply

[21] The General Division considered how the Claimant's cognitive and psychological impairments affected his ability to form and express an intention to apply for the CPP disability benefit. It considered depression, PTSD, excessive worrying, decreased interest, self-blame, and feelings of detachment (paragraphs 17 to 21). It considered the Claimant's psychological state since his injury, including lowered mood, feelings of worthlessness, difficulty concentrating, difficulty making decisions, and persistent anxiety (paragraphs 22 to 24). Then weighed that evidence and linked those limitations to his capacity to form and express an intention to apply (paragraph 42).

[22] The General Division assessed in detail examples of the Claimant's activities and directly linked those to his cognitive capacity (paragraphs 25 to 32). Contrary to what the Claimant argues, the General Division didn't place disproportionate weight on isolated activities. It focused on numerous activities over time. It considered whether he was able to form and express an intention to consent to and participate in medical treatment and assessments, financial decisions, parenting and childcare, and home renovations.

[23] Then the General Division weighed that evidence considered whether his participation in those activities indicated he was able to form and express an intention to

apply (paragraphs 43 and 44). In other words, the General Division’s reasons show it followed the *Blue*, *Sedrak*, and *Kirkland* court decisions. Including detailing the extent to which his other activities “evidenced” his capacity to form and express an intention to apply for a CPP disability pension.¹⁴

[24] The General Division considered, and gave reasons for rejecting, the Claimant’s argument about language barriers (paragraphs 39, 40). So, I can’t accept there’s an arguable case the General Division made an error by not assessing how illiteracy and communication barriers interacted with the Claimant’s accepted cognitive and psychological impairments.¹⁵

– **Summary of this section**

[25] The General Division’s thorough and stepwise reasons show me there’s no arguable case it misapplied the CPP incapacity test to the relevant evidence. It analyzed in detail and gave appropriate weight to the evidence of the Claimant’s cognitive and psychological impairments, alongside other medical evidence, his activities, and his testimony.

[26] The General Division had to consider the Claimant’s main argument and the relevant evidence. The Claimant argued, “Despite showing some participation in medical assessments in later years, [Claimant] was functionally incapable of forming or expressing the intent to apply for CPP-D benefits from the time of his injury until 2024.”¹⁶

[27] The General Division didn’t have to reject or prefer some evidence over other evidence to reach its decision. There was no persuasive evidence to support the Claimant’s argument. The General Division’s reasons show me it properly assessed the evidence in light of the settled legal test—then applied the test. And by doing that, it explained why it rejected the Claimant’s argument.

¹⁴ See *Blue v Canada (Attorney General)*, 2021 FCA 211 at paragraphs 39 to 41.

¹⁵ See AD1-10.

¹⁶ See GD6-3.

[28] Finally, the General Division ended its decision by considering two very persuasive facts (paragraphs 33 to 38). First, the Claimant testified about the reason he didn't apply for a CPP disability pension earlier. He said he didn't know about it. The law says not knowing about entitlement to a disability pension doesn't count as incapacity.¹⁷ Second, he didn't know he could apply earlier because it seems his representative forgot to tell him he could apply. Or didn't realize he should have applied when she was helping him with his workers' compensation claim.

[29] These two facts reinforce my view there isn't an arguable case the General Division should have come to a different outcome in the Claimant's appeal.

Conclusion

[30] The Claimant hasn't shown an arguable case the General Division made an error. And I didn't find an arguable case.

[31] Permission to appeal refused.

Glenn Betteridge
Member, Appeal Division

¹⁷ See *Canada (Attorney General) v Hines*, 2016 FC 112 at paragraph 47.