



Citation: *LH v Canada Employment Insurance Commission*, 2022 SST 463

**Social Security Tribunal of Canada  
Appeal Division**

**Leave to Appeal Decision**

<b>Applicant:</b>	L. H.
<b>Respondent:</b>	Canada Employment Insurance Commission
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<b>Decision under appeal:</b>	General Division decision dated January 13, 2022 (GE-21-2143)
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<b>Tribunal member:</b>	Jude Samson
<b>Decision date:</b>	June 3, 2022
<b>File number:</b>	AD-22-105

## Decision

[1] Leave (permission) to appeal is refused. The appeal will not proceed.

## Overview

[2] The Claimant, L. H., received Employment Insurance (EI) regular benefits from October 2020 to May 2021. However, her benefits were interrupted when she fell behind in filing her biweekly reports. While trying to resolve that problem, the Claimant provided the Canada Employment Insurance Commission (Commission) with information that caused it to reassess her case.<sup>1</sup>

[3] Initially, the Commission decided that the Claimant wasn't entitled to any of the EI regular benefits that she had received, which created a large overpayment. However, the Commission's later decisions significantly reduced her overpayment. The remaining issue before the Tribunal is about the Claimant's entitlement to regular EI benefits from January 18, 2021, to April 23, 2021.

[4] The General Division concluded that the Claimant wasn't entitled to benefits during any of this period for two main reasons:

- from January 18 to February 18, 2021, the Claimant was unable to work because of her health;
- from February 19 to April 23, 2021, the Claimant didn't show that she was available for work in the way the law requires.

[5] The Claimant now wants to appeal the General Division decision to the Tribunal's Appeal Division, but she needs permission for her file to move forward.

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<sup>1</sup> Service Canada delivers the EI program for the Commission.

[6] I sympathize with the Claimant's circumstances. However, I've found that her appeal has no reasonable chance of success. I have no choice, then, but to refuse permission to appeal.

## Issues

[7] This decision focuses on these issues:

- a) Could the General Division have made a jurisdictional error about its ability to modify a claim?
- b) Could the General Division have based its decision on an important mistake about the Claimant's ability to work?
- c) Is there any other reason to give the Claimant permission to appeal?

## Analysis

[8] Most Appeal Division files follow a two-step process. This appeal is at step one: permission to appeal.

[9] The legal test that the Claimant needs to meet at this step is low: Is there any arguable ground on which the appeal might succeed?<sup>2</sup> If the appeal has no reasonable chance of success, then I must refuse permission to appeal.<sup>3</sup>

[10] To decide this question, I focused on whether the General Division could have made a relevant error.<sup>4</sup>

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<sup>2</sup> This legal test is described in cases like *Osaj v Canada (Attorney General)*, 2016 FC 115 at paragraph 12 and *Ingram v Canada (Attorney General)*, 2017 FC 259 at paragraph 16.

<sup>3</sup> This is the legal test described in section 58(2) of the *Department of Employment and Social Development Act*.

<sup>4</sup> The relevant errors, formally known as "grounds of appeal," are listed under section 58(1) of the *Department of Employment and Social Development Act*.

## **The appeal has no reasonable chance of success**

### **– The General Division properly understood its jurisdiction**

[11] To receive EI benefits, the Claimant had to meet all the legal requirements under the law. According to the Commission, the Claimant didn't meet all the requirements because, on each day between January 18 and April 23, 2021, she was either<sup>5</sup>:

- unable to work because of her health;
- unavailable to work within the meaning of the law; or
- working in other suitable employment.

[12] The Claimant now argues that the General Division didn't feel as though it had the authority to modify her claim.<sup>6</sup>

[13] This argument has no reasonable chance of success.

[14] The General Division started by deciding that the Claimant's health prevented her from working between January 18, 2021, and February 18, 2021. It then decided that she was unavailable for work during the rest of the relevant period.

[15] In its decision, the General Division relied heavily on the fact that the Claimant wasn't looking for work with any other employers during the relevant period. In fact, while the Claimant might have been asking to work longer shifts with her current employer, her health limited the number of days in a week that she could work. In other words, she was working at or near the full extent of her abilities.

[16] The General Division clearly understood the issues it had to decide. While the Claimant might have preferred if the General Division had decided more issues in her favour, there's no indication in its decision that it felt prevented from doing so because of a limit to its powers.

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<sup>5</sup> See the Commission's arguments in document GD4 and section 18(1)(a) of the *Employment Insurance Act*.

<sup>6</sup> Among other places, the Claimant explains this argument on page AD5-2.

[17] Put simply, the General Division considered the Claimant's entitlement to EI benefits throughout the entire relevant period. Plus, the results of its decision could have affected the amount of the Claimant's overpayment.

– **The General Division properly understood the facts of the case**

[18] The Claimant also argues that the General Division might have misunderstood some health-related restrictions on her ability to work.<sup>7</sup>

[19] This argument also has no reasonable chance of success.

[20] If the Claimant's health prevented her from working on a particular day, then she isn't entitled to EI regular benefits on that day. So, I do not see how this argument supports the Claimant's argument that she should have received more benefits between January 18 and April 23, 2021.

– **There are no other reasons for giving the Claimant permission to appeal**

[21] There is an unfortunate amount of confusion in this file. The Claimant seems to think that she should receive EI regular benefits from the time that she was able to work two days per week. She seems to have spent a lot of effort trying to establish this date.

[22] Instead, however, the Claimant is only entitled to EI benefits for days on which she met **all** the legal requirements. This includes days on which she was capable of work, available to work, and unable to find suitable employment.

[23] So, beyond the Claimant's arguments, I also reviewed the file, listened to the audio recording of the General Division hearing, and examined the General Division decision.<sup>8</sup> The General Division summarized the law and used evidence to support its decision. I didn't find other reasons for giving the Claimant permission to appeal.

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<sup>7</sup> Among other places, the Claimant explains this argument on page AD5-2.

<sup>8</sup> The Federal Court has said that I must do this in decisions like *Griffin v Canada (Attorney General)*, 2016 FC 874 and *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

## **Conclusion**

[24] I have concluded that the Claimant's appeal has no reasonable chance of success. I have no choice, then, but to refuse permission to appeal. This means that the appeal won't proceed.

Jude Samson  
Member, Appeal Division