



Citation: *FM v Canada Employment Insurance Commission*, 2023 SST 966

## Social Security Tribunal of Canada Appeal Division

# Decision

**Appellant:** F. M.

**Respondent:** Canada Employment Insurance Commission  
**Representative:** Daniel McRoberts

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**Decision under appeal:** General Division decision dated January 31, 2023  
(GE-22-3197)

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**Tribunal member:** Candace R. Salmon

**Type of hearing:** In Writing

**Decision date:** July 25, 2023

**File number:** AD-23-144

## Decision

[1] The appeal is allowed. The General Division made a mistake when it refused to exercise its jurisdiction. The appeal will be returned to the General Division for reconsideration.

## Overview

[2] F. M. is the Claimant. She applied for Employment Insurance (EI) benefits on September 21, 2021. She was not paid any benefits until December 2021, because the Canada Employment Insurance Commission (Commission) determined she was in school from September 2021, until December 2021. It said that she was not entitled to receive EI benefits while in school.

[3] The Claimant appealed to the General Division. It dismissed her appeal, finding that the benefit period couldn't be extended to allow her to claim any additional weeks of benefits. It also found that it didn't have the jurisdiction to decide whether she was available for work, because the Commission hadn't made a reconsideration decision on that issue.

[4] The Claimant appealed to the Appeal Division. She argued that she wasn't in school in the relevant period, so she was available for work.

[5] The Commission now agrees that the General Division made a mistake, by not exercising its jurisdiction to review all matters before it.<sup>1</sup> It asks that I send the file back to the General Division for reconsideration.<sup>2</sup>

[6] The Claimant agrees that I should send the file back to the General Division for reconsideration.<sup>3</sup>

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

<sup>2</sup> See Commission representations at page AD3-5.

<sup>3</sup> See Claimant correspondence of July 18, 2023, at page AD5-1.

## The parties agree on the outcome of the appeal

[7] The parties agree that the General Division made a mistake when it failed to exercise its jurisdiction to decide all matters before it. They ask that I send the appeal back to the General Division, because the record is incomplete, and more evidence is required to make a decision.

### I accept the proposed outcome

[8] The General Division made a mistake. The Claimant gave evidence about her availability and clearly stated that she was available for work from September 20, 2021, until December 5, 2021, because the Commission made a mistake when it found that she was in school at that time. Since the Commission failed to make a reconsideration decision, the General Division found that it also couldn't make a decision.

[9] The General Division had the authority to consider the Claimant's availability while in school, despite the issue not being reconsidered by the Commission. There are cases that suggest the Tribunal should take a broad approach to its jurisdiction, within the limits of the law, to manage appeals fairly and efficiently and to consider the underlying requests and decisions to determine the scope of the reconsideration.<sup>4</sup>

[10] The law says that a person may ask for reconsideration of a Commission decision.<sup>5</sup> If they don't agree with the reconsideration decision, they can appeal to the Tribunal's General Division.<sup>6</sup> In this case, the Claimant requested reconsideration and raised the issue of availability. She received a reconsideration decision and was not satisfied with the outcome, in part because the Commission didn't consider her availability.

[11] The Claimant clearly raised the issue of availability, but the Commission failed to address it during reconsideration. The *Department of Employment and Social*

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<sup>4</sup> See *Fu v Canada (Attorney General)*, 2019 FC 527; *ML v Minister of Employment and Social Development*, 2020 SST 281 at paragraph 17; and *MS v Canada Employment Insurance Commission*, 2022 SST 933.

<sup>5</sup> See *Employment Insurance Act* (EI Act), section 112.

<sup>6</sup> See EI Act, section 113.

*Development Act* (DESD Act) says that the General Division has the power to, “give the decision that the ... Commission should have given.”<sup>7</sup> Further, the Tribunal should take a broad approach to its jurisdiction, to manage appeals fairly and efficiently.<sup>8</sup> This means the General Division had the authority to make a decision about the Claimant’s availability but didn’t exercise its jurisdiction.

### **The file will return to the General Division**

[12] The parties agree that this file should be returned to the General Division for reconsideration. I agree. It is not possible to substitute my decision for that of the General Division because the record is incomplete. The General Division did not ask questions about the Claimant’s availability because it decided that it didn’t have jurisdiction over that issue. Since the evidence needed to make a decision isn’t in the file, I am sending the file back to the General Division for reconsideration.

### **Conclusion**

[13] The appeal is allowed. The General Division failed to exercise its jurisdiction. I am returning the appeal to the General Division for reconsideration.

Candace R. Salmon  
Member, Appeal Division

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<sup>7</sup> See DESD Act, section 54(1).

<sup>8</sup> See *Fu v Canada (Attorney General)*, 2019 FC 527, at paragraphs 43 to 45.