



Citation: *AS v Canada Employment Insurance Commission*, 2023 SST 560

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

**Leave to Appeal Decision**

**Applicant:** A. S.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated December 20, 2022  
(GE-22-2678)

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**Tribunal member:** Solange Losier

**Decision date:** September 26, 2023

**File number:** AD-23-64

## Decision

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

## Overview

[2] A. S. is the Claimant in this case. When he stopped working, he applied for *Employment Insurance* (EI) regular benefits.

[3] The Canada Employment Insurance Commission (Commission) decided that the Claimant was not available for work, so he could not get EI benefits from April 25, 2022.<sup>1</sup>

[4] The General Division came to the same conclusion.<sup>2</sup> It said that the Claimant had not shown he was available for work from April 25, 2022.<sup>3</sup>

[5] The Claimant is now asking for permission to appeal the General Division decision to the Appeal Division.<sup>4</sup> He needs permission for the appeal to move forward. He says that the General Division made various types of errors in its decision.

[6] I am denying the Claimant's request for permission to appeal because it has no reasonable chance of success.<sup>5</sup>

## Issue

[7] Is there an arguable case that the General Division made a reviewable error when it decided that the Claimant was not available for work?

## Analysis

[8] An appeal can proceed only if the Appeal Division gives permission to appeal.<sup>6</sup>

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<sup>1</sup> See reconsideration decision at page GD3-43.

<sup>2</sup> See General Division decision at pages AD1-8 to AD1-19.

<sup>3</sup> See sections 18(1)(a) and 50(8) of the *Employment Insurance Act* (EI Act).

<sup>4</sup> See application to the Appeal Division at pages AD1-1 to AD1-37; AD1A-1; AD1B-1 and AD1C-1.

<sup>5</sup> See section 58(2) of the *Department of Employment and Social Development Act* (DESD Act).

<sup>6</sup> See section 56(1) of the DESD Act.

[9] I must be satisfied that the appeal has a reasonable chance of success.<sup>7</sup> This means that there must be some arguable ground upon which the appeal might succeed.<sup>8</sup>

[10] I can only consider certain types of errors. I have to focus on whether the General Division could have made a reviewable error (this is also called the “grounds of appeal”).<sup>9</sup>

[11] The possible grounds of appeal to the Appeal Division are that the General Division did one of the following:<sup>10</sup>

- made an error in law
- based its decision on an important error of fact
- proceeded in a way that was unfair
- acted beyond its powers or refused to exercise those powers

## **I am not giving the Claimant permission to appeal**

### **– The Claimant says that the General Division made errors**

[12] The Claimant identified on his application to the Appeal Division that the General Division made an error of law, error of fact, an error of jurisdiction and didn't follow procedural fairness.<sup>11</sup>

[13] A summary of the Claimant's main arguments to the Appeal Division are as follows:<sup>12</sup>

- [The General Division's decision is boilerplate and filled with canned phrases.](#)

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<sup>7</sup> See section 58(2) of the DESD Act.

<sup>8</sup> See *Osaj v Canada (Attorney General)*, 2016 FC 115.

<sup>9</sup> See section 58(1) of the DESD Act.

<sup>10</sup> See section 58(1) of the DESD Act

<sup>11</sup> See page AD1-3 and section 58(1) of the DESD Act.

<sup>12</sup> See pages AD1-3 and AD1-20 to AD1-37.

- A Service Canada agent made a false statement and it should be investigated. The investigation result was decided before it even started.
- He didn't keep a job search log because his application for EI benefits was denied by the Commission and would not need to send in a job search log.
- In paragraph 20 of the General Division decision, he went on vacation from April 25, 2022 to May 11, 2022. He reported this and he was not getting EI benefits, so it is illegal to go on vacation while on EI benefits.
- He applied for work, but the Tribunal Member chose not to believe him as it was his objective to deny him EI benefits. Despite all the proof he provided, the Tribunal Member had already concluded before the hearing began.
- He has worked in Information Technology (IT) all of his career, but he has to try convincing an employer that a man in 70's will not get injured or croak on site.
- In paragraph 26 of the General Division's decision, it is an outright lie when it said that he backtracked and reconstructed the job search list.
- The Commission never asked him to send a [job] list.

– **The legal test for availability cases**

[14] To be available for work, a Claimant must show that he is capable of and available for work and unable to obtain suitable employment for each working day.<sup>13</sup>

[15] The law says that a working day is any day of the week except for Saturday and Sunday.<sup>14</sup>

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<sup>13</sup> Section 18(1) (a) of the *Employment Insurance Act* (EI Act)

<sup>14</sup> Section 32 of the *Employment Insurance Regulations* (EI Regulations).

[16] The Federal Court of Appeal (Court) says that there are three factors to analyze availability:<sup>15</sup>

1. The desire to return to the labour market as soon as a suitable job is offered;
2. The expression of that desire through efforts to find a suitable job, and
3. Not setting personal conditions that might unduly limit the chances of returning to the labour market.

[17] There are also criteria set out in law to decide whether the Claimant's efforts are reasonable and customary.<sup>16</sup> The Claimant has to show that their efforts are sustained and directed to finding a suitable job.

[18] The Commission disentitled the Claimant from receiving EI benefits from April 25, 2022, because he had not proven his availability for work.<sup>17</sup>

[19] The General Division had to decide whether the Claimant had proven his availability for work from April 25, 2022.

**– It is not arguable that the General Division made an error of law or an important error of fact**

[20] In its decision, the General Division correctly stated the relevant sections of the *Employment Insurance Act* (EI Act) and applied them as they relate to availability cases.<sup>18</sup> It also identified the relevant case law that provides the factors for determining availability for work.<sup>19</sup>

[21] The General Division first assessed whether the Claimant's job efforts were reasonable and customary.<sup>20</sup> It decided that the Claimant's own statements about his

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<sup>15</sup> See *Faucher v Canada (Employment and Immigration Commission)*, A-56-96.

<sup>16</sup> See sections 50(8) of the EI Act and 9.001 of the EI Regulations.

<sup>17</sup> See reconsideration decision at page GD3-43.

<sup>18</sup> See paragraphs 11, 12, 13, 16 and 17 of the General Division decision; sections 18(1)(a) and 50(8) of the EI Act and section 9.001 of the EI Regulations.

<sup>19</sup> See paragraphs 42 to 43 of the General Division decision.

<sup>20</sup> See 50(8) of the EI Act.

job search efforts were inconsistent and that his efforts were not sustained throughout the entire period.<sup>21</sup>

[22] The Claimant submitted a job list of the places he applied to.<sup>22</sup> However, the General Division rejected it saying that he didn't actually have a job search list when he spoke to the Commission, but instead created it later in an effort to show he looked for work.<sup>23</sup> Because of that, the General Division concluded that he hadn't proven that his efforts to find a job were reasonable and customary from April 25, 2022.<sup>24</sup>

[23] The General Division also assessed whether the Claimant was available for work according to the three factors that are outlined in the case law.<sup>25</sup> These factors come from a Federal Court of Appeal case, called *Faucher*.

[24] First, it decided that the Claimant had demonstrated a desire to work, but for only **part** of the entire period he was disentitled to EI benefits.

[25] The General Division accepted that the Claimant had shown he wanted to work from May 12, 2022 to May 18, 2022 and again from August 18, 2022 when he signed a new job contract at the college.<sup>26</sup>

[26] However, this also meant that he had not proven he was available for work for every working day. This was consistent with the General Division's finding and evidence that the Claimant was on vacation from April 25, 2022 to May 11, 2022 and not available for work.<sup>27</sup>

[27] Second, the General Division considered whether the Claimant had made efforts to find a suitable job. It acknowledged that the Claimant made some efforts, but decided that he had not made enough effort to find a suitable job during the relevant period.<sup>28</sup> As

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<sup>21</sup> See paragraph 39 of the General Division decision.

<sup>22</sup> See job list at pages GD2-14 to GD2-15 and GD5-3.

<sup>23</sup> See paragraph 28 of the General Division decision.

<sup>24</sup> See paragraph 40 of the General Division decision.

<sup>25</sup> See *Faucher v Canada (Employment and Immigration Commission)*, A-56-96.

<sup>26</sup> See paragraph 48 of the General Division decision.

<sup>27</sup> See paragraph 45 of the General Division decision and page GD3-40.

<sup>28</sup> See paragraphs 49, 51 and 54 of the General Division decision.

noted above, the General Division said that the Claimant's statements about his job search were inconsistent, so it was not persuaded that he actually applied for most of the jobs on the list he provided.<sup>29</sup>

[28] Third, the General Division concluded that the Claimant had set personal conditions that might have unduly limited his chances of going back to work.<sup>30</sup> It said that he restricted his focus to intermediate IT jobs before he knew with more certainty that he wouldn't be hired for junior IT jobs.<sup>31</sup>

[29] The General Division was free to weigh the evidence and reach the conclusions it did. In doing so, it appropriately addressed the conflicting statements and evidence about his job search efforts and recollection.

[30] The Claimant says that the General Division lied in paragraph 26 of its decision. That paragraph says:

The Claimant testified that when the Commission told him to make a job search list, he backtracked and reconstructed it as best he could. He didn't submit the list to the Commission because he didn't have it on hand when he spoke to them again, so he couldn't tell them about it.

[31] I listened to the hearing recording. The Claimant did in fact testify that once the Commission told him to keep track of the jobs he was applying for, that he made the job search list by backtracking and reconstructing it.<sup>32</sup> Given that, there was no error of fact made when the General Division restated the Claimant's testimony about his job search list.

[32] The General Division's conclusion that the Claimant was not available for work was consistent with the facts and evidence in the file. It did not overlook, ignore or misunderstand any of the facts or evidence.

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<sup>29</sup> See paragraph 52 of the General Division decision and job list at pages GD2-14 to GD2-15 and GD5-3.

<sup>30</sup> See paragraph 55 of the General Division decision.

<sup>31</sup> See paragraph 61 of the General Division decision.

<sup>32</sup> See hearing recording 52:40 to 54:50.

[33] An appeal to the Appeal Division is not a new hearing. I cannot reweigh the evidence in order to come to a different conclusion that is more favourable for the Claimant.<sup>33</sup>

[34] So, it is not arguable that the General Division made an error of law or an important error of fact.

– **It is not arguable that the General Division made an error of jurisdiction**

[35] The General Division only decided the issues that it had the authority to decide, namely whether the Claimant was available to work according to the EI Act.

[36] The General Division explained its jurisdiction to the Claimant at the hearing. It said that the issue under appeal was only his availability for work and said it was not about EI premiums or his self-employment.<sup>34</sup>

[37] The General Division's jurisdiction comes from the reconsideration decision made by the Commission. The reconsideration decision shows that the only issue in dispute is whether the Claimant was available for work from April 25, 2022.<sup>35</sup>

[38] So, it is not arguable that the General Division made an error of jurisdiction.

– **It is not arguable that the General Division breached procedural fairness**

[39] The General Division did not breach procedural fairness. In other words, it did not proceed in an unfair way.

[40] The Claimant got notice of the hearing and attended. The hearing recording shows that the Claimant had an opportunity to fully present his case. The Member asked the Claimant relevant questions throughout the hearing and gave him a chance to submit post-hearing documents to provide supporting evidence of the job applications

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<sup>33</sup> See *Garvey v Canada (Attorney General)*, 2018 FCA 118.

<sup>34</sup> See hearing recording at 22:30 to 24:11.

<sup>35</sup> See reconsideration decision at pages GD3-43 to GD3-44 and section 113 of the EI Act.



he said he made. There was no indication that the General Division decided the matter before the hearing began as alleged by the Claimant.

[41] The Claimant says that the decision is boilerplate and filled with canned phrases. The General Division's decision adequately reflects the specific facts and evidence of this particular case. There is no reasonable chance of success on this ground.

[42] So, it is not arguable that the General Division breached procedural fairness or proceeded in an unfair way.

– **The Claimant's arguments are focused on the Commission's conduct**

[43] Many of the Claimant's arguments to the Appeal Division are focused on the Commission's investigation and an allegation that a Service Canada agent told him that he didn't pay EI premiums.<sup>36</sup>

[44] The file shows that the Commission responded to the Claimant's concerns twice and provided an explanation.<sup>37</sup> While the Claimant may not be satisfied with the Commission's response, neither the General Division nor the Appeal Division has the authority to conduct an investigation. This is outside of the mandate of the Tribunal.

[45] The Claimant also raised these same arguments at the General Division hearing. The General Division member explained to the Claimant that he could make a complaint directly to Service Canada or discuss his concerns with the Member of Parliament.<sup>38</sup> The Claimant told the General Division that he had already made a complaint to his Member of Parliament.

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<sup>36</sup> See application to the Appeal Division at pages AD1-1 to AD1-37; AD1A-1; AD1B-1 and AD1C-1.

<sup>37</sup> See pages GD10-1 and GD14-1.

<sup>38</sup> See hearing recording at 26:50 to 27:55.

[46] The Appeal Division's mandate is limited to determining whether the General Division made a reviewable error.<sup>39</sup> There is no arguable case that the General Division made any reviewable errors in this case, so there is no reasonable chance of success.

## **Conclusion**

[47] Permission to appeal is refused. This means that the appeal will not proceed.

Solange Losier  
Member, Appeal Division

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<sup>39</sup> See section 58(2) of the DESD Act; *Marcia v Canada (Attorney General)*, 2016 FC 1367 and *Parchment v Canada (Attorney General)*, 2017 FC 354.