



Citation: *KS v Canada Employment Insurance Commission*, 2024 SST 87

**Social Security Tribunal of Canada  
Appeal Division**

**Leave to Appeal Decision**

**Applicant:** K. S.

**Respondent:** Canada Employment Insurance Commission

---

**Decision under appeal:** General Division decision dated October 13, 2023  
(GE-23-1103)

---

**Tribunal member:** Solange Losier

**Decision date:** January 29, 2024

**File number:** AD-23-983

## Decision

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

## Overview

[2] K. 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 could not pay him EI benefits from September 26, 2022 to February 23, 2023 because of a lack of evidence of job seeking activity.<sup>1</sup>

[4] The General Division came to the same conclusion.<sup>2</sup> It decided that the Claimant had not proven he was available for work. Because of that, it said he couldn't get EI benefits.

[5] The Claimant is now asking for permission to appeal the General Division decision to the Appeal Division.<sup>3</sup>

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

## I am not accepting the new evidence

[7] In the Claimant's application to the Appeal Division, he submitted the following four documents to support his appeal:

- Ontario Court of Justice Order, dated March 30, 2023
- Freedom Mobile timeline
- Email from Peel Police to the Claimant, dated December 6, 2022

---

<sup>1</sup> See reconsideration decision at pages GD3-60 to GD3-61.

<sup>2</sup> See General Division decision at pages AD1A-1 to AD1A-9.

<sup>3</sup> See application to the Appeal Division at pages AD1-1 to AD1-12.

- Commissioner for Complaints for Telecommunications Services (CCTS) - Incident report and complaint about Freedom Mobile

[8] The Appeal Division generally does not accept new evidence, but there are some exceptions.<sup>4</sup> For example, I can accept new evidence if it provides one of the following:

- general background information only
- if it highlights findings made without supporting evidence
- shows that the Tribunal acted unfairly

[9] I note that only the first document, the Ontario Court of Justice Order, dated March 30, 2023 was before the General division.<sup>5</sup> The remaining documents are new evidence and were not before the General Division.

[10] I find that none of the exceptions apply to the remaining documents, so I cannot accept the Claimant's new evidence. To be specific, the Freedom Mobile timeline, the email from Peel Police and his CCTS complaint.

## Issue

[11] Is there an arguable case that the General Division made an error of jurisdiction?

## Analysis

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

[13] 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>

---

<sup>4</sup> See *Sharma v Canada (Attorney General)*, 2018 FCA 48 and *Sibbald v Canada (Attorney General)*, 2022 FCA 157.

<sup>5</sup> See pages GD5-7 to GD5-10.

<sup>6</sup> See section 56(1) of the *Department of Employment and Social Development Act* (DESD Act).

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

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

[14] The possible grounds of appeal to the Appeal Division are that the General Division:<sup>9</sup>

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

[15] In order to proceed to next steps, the Claimant's appeal has to have a reasonable chance of success.

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

– **The Claimant says that the General Division made an error of jurisdiction**

[16] The Claimant says that the General Division made an error of jurisdiction.<sup>10</sup> He says that he made enough efforts from February 23, 2023 to June 6, 2023. Also, he says that he has supporting documents to make his appeal stronger.<sup>11</sup>

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

[17] An error of jurisdiction means that the General Division didn't decide an issue it had to decide or decided an issue it did not have the authority to decide.<sup>12</sup>

[18] The General Division's jurisdiction to decide an issue comes from the Commission's reconsideration decision that is appealed to the Tribunal.<sup>13</sup>

[19] The Commission decided that the Claimant was not available for work from September 26, 2022 to February 23, 2023.<sup>14</sup> This is the reconsideration decision that the Claimant appealed to the Tribunal.

---

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

<sup>10</sup> See page AD1-3.

<sup>11</sup> He is referring to the new evidence he submitted to the Appeal Division.

<sup>12</sup> See section 58(1)(a) of the DESD Act.

<sup>13</sup> See sections 112 and 113 of the *Employment Insurance Act* (EI Act).

<sup>14</sup> See reconsideration decision at pages GD3-60 to GD3-61.

[20] The law says that claimants are not entitled to EI benefits unless they prove they are capable of and available for work and unable to obtain suitable employment.<sup>15</sup>

[21] The Federal Court of Appeal (Court) says that there are three factors to consider when assessing a claimant's availability. The following are often called the "Faucher" factors:<sup>16</sup>

- they wanted to return to work as soon as a suitable job was available;
- they made efforts to find a suitable job; and
- set personal conditions that unduly limited their chances of finding a job.

[22] The law also says that the Commission may ask a claimant to prove that they are making reasonable and customary efforts to find suitable work.<sup>17</sup>

– **The General Division decided that the Claimant had not proven he was available for work**

[23] The General Division had to decide whether the Claimant had proven he was capable of and available for work and unable to obtain suitable employment for the period from September 26, 2022 to February 23, 2023. To do that, it had to consider the above three Faucher factors and assess whether the Claimant made reasonable and customary efforts to find a suitable job.

[24] The General Division outlined the applicable law in its decision and assessed the Claimant's availability using the Faucher factors.<sup>18</sup>

[25] It decided that the Claimant hadn't shown he wanted to return to work, and that he hadn't made enough efforts to find a job. It also found that not having a cell phone was a personal condition that might have unduly limited his chances of returning to work. It noted that the police had taken his cell phone due to an ongoing court matter,

---

<sup>15</sup> See section 18(1)(a) of the EI Act.

<sup>16</sup> See *Faucher v Canada Employment and Immigration Commission*, 1997 CanLII 4856 (FCA).

<sup>17</sup> See section 50(8) of the EI Act and 9.001 of the *Employment Insurance Regulations* (EI Regulations)

<sup>18</sup> See paragraphs 31, 33, 34, 35, 38, 39, 41 and 43 of the General Division decision.

so he could not be contacted.<sup>19</sup> It explained that it would have been hard for potential employers to reach him.

[26] The General Division also decided that the Claimant had not made reasonable and customary efforts to find a suitable job.<sup>20</sup> It found that his efforts were not sustained for the period from October [2022] to January [2023].<sup>21</sup>

[27] As a result, the General Division decided that he was not entitled to get EI benefits because he had not proven that he was available for work.<sup>22</sup>

– **There is no arguable case that the General Division made an error of jurisdiction**

[28] It looks like the Claimant is trying to reargue his case because he disagrees with the General Division's conclusion and wants a different outcome. Most of his arguments to the Appeal Division simply restate reasons that were already considered by the General Division.

[29] Based on my review, there is no arguable case that the General Division made an error of jurisdiction for the following reasons.<sup>23</sup>

[30] First, hearings before the Appeal Division are not redos based on updated evidence.<sup>24</sup> It is a review of the General Division decision based on the same evidence.

[31] Second, the Appeal Division has a limited role, so I cannot intervene to reweigh the evidence or to settle a disagreement about the application of settled legal principles to the facts of a case.<sup>25</sup>

[32] The General Division considered that he had an ongoing court matter resulting in his cell phone being confiscated.<sup>26</sup> It was free to weigh that evidence and decide that it

---

<sup>19</sup> See paragraph 42 of the General Division decision.

<sup>20</sup> See paragraph 19 of the General Division decision.

<sup>21</sup> See paragraphs 29 and 30 of the General Division decision.

<sup>22</sup> See paragraph 45 of the General Division decision.

<sup>23</sup> See section 58(1)(a) of the DESD Act.

<sup>24</sup> See *Gittens v Canada (Attorney General)*, 2019 FCA 256, at paragraph 13.

<sup>25</sup> See *Garvey v Canada (Attorney General)*, 2018 FCA 118.

<sup>26</sup> See paragraphs 42 and 43 of the General Division decision.

affected his availability for work because potential employers might not be able to reach him.

[33] Third, the General Division only decided the issues that it had the power to decide. It properly assessed his availability for the relevant period, from September 26, 2022 to February 23, 2023.<sup>27</sup>

[34] The General Division did not decide any issues it didn't have the power to decide. While the Claimant argues he made enough efforts from February 23, 2023 to June 6, 2023, the General Division had no authority to assess his availability after February 23, 2023. Even though the Claimant might have been dealing with other court matters and complaints, the General Division was limited to making decisions only dealing with the *Employment Insurance Act*.

[35] There is no arguable case that the General Division made an error of jurisdiction. This means that the Claimant's appeal has no reasonable chance of success.<sup>28</sup>

[36] I reviewed the file and examined the General Division decision.<sup>29</sup> The General Division applied the relevant sections in law and legal test for availability cases. I found no evidence that it ignored or misunderstood any key evidence.

## Conclusion

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

Solange Losier  
Member, Appeal Division

---

<sup>27</sup> This is the period that he was disentitled to EI benefits, see reconsideration decision at page GD3-60 to GD3-61.

<sup>28</sup> See section 58(2) of the DESD Act.

<sup>29</sup> The Federal Court has said that I should do a review like this in decisions like *Griffin v Canada (Attorney General)*, 2016 FC 874 and *Karadeolian v Canada (Attorney General)*, 2016 FC 615.