



Citation: *IH v Canada Employment Insurance Commission*, 2024 SST 486

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant: I. H.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated February 16, 2024
(GE-23-3228)

Tribunal member: Glenn Betteridge

Decision date: May 8, 2024

File number: AD-24-213

Decision

[1] I am not giving I. H. permission to appeal. This means her appeal will not go ahead. So the General Division decision stands unchanged.

Overview

[2] I will call I. H. the Claimant because she made a claim for EI benefits. She was out of Canada from January 6 to May 14, 2021. She completed her biweekly Employment Insurance (EI) reports and continued to get benefits during that time.

[3] The General Division decided she was not entitled to get benefits because she was out of Canada and hadn't proven she was available for work. This meant she could not get benefits under the *Employment Insurance Act*.¹

[4] The Claimant appealed the General Division decision. Her appeal can only go forward if I grant leave (in other words, give her permission).

Issue

[5] Is there **an arguable case** the General Division made an important factual error when it found the Claimant didn't search for work when she was out of Canada?

I am not giving the Claimant permission to appeal

The test for getting permission to appeal is easy to meet

[6] I can give permission to appeal if the party asking for permission can show there is an **arguable case** the General Division

- used an **unfair process** or was **biased**

¹ See sections 18(1) and 37 of the *Employment Insurance Act*, and section 55(1) of the *Employment Insurance Regulations*. The Federal Court of Appeal tells us how these sections of the law should be interpreted in *Canada (Attorney General) v Elyoumni*, 2013 FCA 151.

- didn't decide an issue it **should have decided**, or decided an issue it **should not have decided**
- based its decision on an **important factual error**
- made a **legal error**²

[7] The arguable case test is easy to meet.³

There isn't an arguable case the General Division ignored evidence the Claimant searched for work

[8] The Claimant argues the General Division made an important error of fact.⁴ She says she searched for "online jobs from Canadian offices" when she was outside Canada. I understand she means the General Division ignored the fact she testified she looked for work.

[9] The General Division makes an **important factual error** if it bases its decision on a factual finding it made by ignoring, misunderstanding, or mistaking the evidence.⁵ In other words, the evidence goes squarely against or doesn't support a factual finding the General Division made.⁶

[10] At paragraphs 52 and 53 of its decision, the General Division writes:

[51] The Appellant told the Commission that she wasn't looking for work in Canada while she was outside of Canada. [Footnote cites page GD3-25.]

² These are the grounds of appeal in section 58(1) of the *Department of Employment and Social Development Act* (DESD Act). Section 58(2) of the DESD Act says that I have to give permission to appeal if the appeal has a reasonable chance of success. This is the same as having an "arguable case." See *O'Rourke v Canada (Attorney General)*, 2018 FC 498. See also section 58(1)(b) of the DESD Act.

³ 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.

⁴ See page AD01B-2.

⁵ Section 58(1)(c) of the DESD Act says it's a ground of appeal where the General Division based its decision on an erroneous finding of fact it made in a perverse or capricious manner or without regard for the material before it. I have described this ground of appeal using plain language, based on the words in the DESDA Act and the cases that have interpreted that Act.

⁶ See *Garvey v Canada (Attorney General)*, 2018 FCA 118; and *Walls v Canada (Attorney General)*, 2022 FCA 47.

[52] The Appellant testified that she wasn't really looking for work herself while she was away. She didn't have the energy to do that. But she asked her son 3 or 4 times a week to look for work for her because she knew that she had to come back to Canada eventually and would need a job.

[53] I acknowledge that the Appellant took some steps to try and find work in Canada while she was away by asking her son to look for her.

[11] I listened to the hearing recording. The Claimant testified about her availability for work—including what she did to find work.⁷ The General Division asked her questions to make sure it understood what she was saying. I also reviewed the documents the Claimant and Commission sent to the General Division. In its decision, the General Division refers to the only evidence in those documents about looking for work (see paragraph 51, set out above).

[12] The General Division reviewed the evidence and found as a matter of fact the Claimant looked for work (paragraphs 52 and 53). There isn't an arguable case the General Division misunderstood, mistook, or ignored evidence about the Claimant's job search. So there isn't an arguable case the evidence goes squarely against or doesn't the General Division's factual finding.

[13] This means the Claimant hasn't shown there is an arguable case the General Division made an important factual error.

There is no arguable case the General Division made another error

[14] The Claimant is representing herself. So I looked beyond the argument she made to see if there was an arguable case the General Division made other errors.⁸ I reviewed the appeal file, listened to the General Division hearing, and read the General Division decision.

⁷ Listen to the hearing recording at 45:20 to 57:09, where the Claimant gives this testimony.

⁸ Where a self-represented claimant is asking for permission to appeal a General Division decision, I should not apply the permission to appeal test in a mechanistic manner. I take this to mean I should review the law, the evidence, and the decision from the General Division. See for example *Griffin v Canada (Attorney General)*, 2016 FC 874; *Karadeolian v Canada (Attorney General)*, 2016 FC 615; and *Joseph v Canada (Attorney General)*, 2017 FC 391.

[15] The General Division identified and decided the legal issues it had to decide. It correctly summarized and used the law it had to use in the appeal. I didn't find evidence the General Division ignored, misunderstood, or mistook any relevant evidence. And nothing shows me there is an arguable case the General Division failed to give the Claimant a full and fair opportunity to present her case.

[16] In other words, there is no arguable case the General Division made any other error.

[17] The reasons the Claimant gives in her appeal form show me she is really asking to have her **debt forgiven, or to pay it back in instalments**. She makes this request based on financial hardship, poor health, and the extremely difficult period she went through when she was out of the country caring for her dying parents-in-law.

[18] The law doesn't give the General Division or the Appeal Division the power to do what the Claimant is asking. But the **Commission has the power to write off some or all of the debt**. As the General Division wrote in its decision, the Claimant can contact the **Debt Management Call Centre at Canada Revenue Agency at 1-866-864-5823** if she wants to negotiate a repayment schedule or ask for other debt relief.

Conclusion

[19] I am not giving the Claimant permission to appeal. This means her appeal will not go ahead. So the General Division decision stands unchanged.

Glenn Betteridge
Member, Appeal Division