Citation: *EZ v Canada Employment Insurance Commission*, 2024 SST 501

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	E. Z.
Respondent:	Canada Employment Insurance Commission
Decision under appeal:	General Division decision dated March 18, 2024 (GE-24-698)
Tribunal member:	Glenn Betteridge
Decision date:	May 9, 2024
File number:	AD-24-241

Decision

[1] I am not giving E. Z. permission to appeal. This means his appeal won't go ahead. So, the General Division decision stands unchanged.

Overview

[2] E. Z. is the Claimant in this case. He made a claim for Employment Insurance (EI) regular benefits for a time when he was outside Canada. He was visiting his critically ill father, who unfortunately passed away. The Claimant caught COVID-19 and could not return to Canada for over a month.

[3] The Canada Employment Insurance Commission (Commission) decided he was entitled to benefits for two weeks, specifically the period from March 14 to 28, 2021. I will call this the **first period**. He met two exceptions to the rule that says people aren't entitled to benefits while outside Canada (out-of-Canada rule).[1] Namely, he was outside Canada to visit an immediate family member who was seriously ill or injured, and to attend a funeral of a close family member. He could get one week of benefits under each exception.[2]

[4] But the Commission decided he wasn't entitled to benefits from March 29 to May 3, 2021. I will call this the **second period**. So, he had to pay back the benefits he had received for the second period.

[5] The General Division dismissed his appeal. It decided he wasn't entitled to benefits for the second period, for two reasons: He didn't meet any exceptions to the out-of-Canada rule, and he hadn't shown he was available for work.

[6] The Claimant has asked for permission to appeal the General Division decision.

[1] Section 37(b) of the *Employment Insurance Act* (EI Act) says that a person isn't entitled to receive benefits for a period they aren't in Canada, subject to the exceptions in section 55 of the *Employment Insurance Regulations* (EI Regulations).
[2] These are exceptions in sections 55(1)(b) and 55(1)(d) of the EI Regulations.

Preliminary issue: I haven't considered new evidence

[7] The Claimant sent the Appeal Division copies of an airline booking confirmation and of the results for two medical lab tests (lab reports).[3] One lab report is new evidence because it wasn't before the General Division.[4]

[8] I can't accept the new lab report into evidence. In other words, I can't consider it.[5] It doesn't meet a recognized exception to the law that says the Appeal Division can't accept new evidence.[6] The Claimant hasn't made an argument about why I should accept it for another reason. And I don't see another reason to accept it.

Issues

[9] I have to decide three issues:

- Is there an arguable case that the General Division used an unfair process?
- Is there an arguable case that the General Division made an important factual error by basing its decision on an incorrect factual finding it made by ignoring medical evidence?
- Is there an arguable case that the General Division made another type of error?

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[3] See AD1-8 to AD1-14.
[4] See the lab report at AD1-8. The one lab report that was before the General Division is at GD3-20.
[5] The Appeal Division's limited role normally prevents me from considering new evidence. See sections 58 and 59 of the *Department of Employment and Social Development Act* (DESD Act). The law says that I must focus on whether the General Division made a relevant error. And that assessment is usually based on the materials that the General Division had in front of it. I can't take a fresh look at the case and come to my own conclusions based on new and updated evidence.
[6] The Appeal Division normally applies the exceptions set out in *Sharma v Canada (Attorney General)*, 2018 FCA 48 at paragraph 8; and *Greeley v Canada (Attorney General)*, 2019 FC 1493 at paragraph 28.

I am not giving the Claimant permission to appeal

The test for getting permission to appeal is easy to meet

[10] I can give permission to appeal if a claimant can show an arguable case that the General Division:

- used an unfair process or was biased
- made a legal error
- based its decision on an important factual error
- didn't decide an issue it should have decided, or decided an issue it should not have decided[7]

[11] The arguable case test is easy to meet.[8]

There isn't an arguable case that the General Division used an unfair process

[12] The General Division makes an error if it uses an unfair process or is biased. These are called procedural fairness or natural justice errors. The question is whether a person knew the case they had to meet, had an opportunity to respond to that case, and had an impartial decision-maker consider their case fully and fairly.[9]

[13] On his appeal application, the Claimant checked the box that says the General Division didn't follow procedural fairness.[10] He didn't give any reasons. So, I gave him an opportunity to give reasons, which he did.[11]

[7] These are the grounds of appeal in section 58(1) of the 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.
[8] 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.
[9] See *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69; and *Kuk v Canada (Attorney General)*, 2024 FCA 74.
[10] See AD1-3.
[11] See AD1B-2.

[14] The Claimant didn't point to anything specific that was unfair in the way the General Division handled his appeal, or anything that was unfair about the hearing.

[15] He argues the General Division didn't follow due process because it didn't treat the first period the same as the second period. He asks why the first period is allowed for benefits and the second period isn't, even if he was outside Canada and unavailable for work in both periods. He says he should be entitled to benefits for the second period too because both periods are of "equal value."[12]

[16] I have reviewed the evidence that was before the General Division, the law that the General Division had to apply, and the General Division decision. There isn't an arguable case that the General Division didn't give the Claimant a full and fair opportunity to present his case. And there isn't an arguable case that the General Division member was biased or prejudged his appeal.

[17] So, the Claimant hasn't shown there is an arguable case that the General Division used an unfair process, was biased, or prejudged his appeal.

[18] Really, the Claimant is arguing the outcome isn't fair to him. But the unfairness of a decision isn't a type of error the law lets me consider.

There isn't an arguable case that the General Division made an important factual error

[19] The Claimant argues: "The doctor's reports are not taken into consideration where they demonstrate I became ill (covid -19 test positive) hospitalized and recovered (covid -19 test negative)." He adds: "[T]he reasons for not looking for work because I was ill and unable to return home."[13]

[20] By this I understand the Claimant is arguing that the General Division ignored medical evidence when it considered whether he was entitled to benefits for the second period.

[12] See AD1B-2.
[13] See AD1B-2.

[21] The General Division makes an important factual error if it bases its decision on a factual finding it made by ignoring or misunderstanding evidence.[14] In other words, the evidence goes squarely against or doesn't support a factual finding the General Division made.[15]

[22] The General Division looked at the Claimant's medical situation when deciding whether an exception to the out-of-Canada rule applied for the second period. It said:

> [16] The Appellant says that he should not be disentitled because he caught COVID- 19 and was unable to return to Canada before May 4, 2021. He says he became ill on March 24, 2021, and tested positive on March 27, 2021. [Footnote citing the lab report at GD2-12.] He testified that he received medical treatment and was quarantined for one month. He was unable to return to Canada until he obtained a negative COVID-19 test result on May 1, 2021. He booked the first available ticket to return home on May 4, 2021.
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> [17] I accept the Appellant's evidence that he tested positive on March 27, 2021, and was unable to return to Canada until May 4, 2021. I find this because of the quarantine and requirement to have a negative COVID-19 test result to fly.

[23] I have reviewed the documents that were before the General Division. The lab report the General Division cites in paragraph 26 was the only medical report.[16] It shows that the Claimant tested positive for COVID-19 on March 27, 2021. He told the Commission he was quarantined in Albania with COVID-19.[17] And under local regulations, he could not purchase a plane ticket until he had a negative COVID-19 test. On his General Division appeal form, he refers to that medical lab report. And he says that he returned to Canada with a negative test on May 4, 2021.[18]

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[14] Section 58(1)(c) of the DESD Act says it is a ground of appeal where the General Division "based its decision on an erroneous finding of fact that 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 DESD Act and the cases that have interpreted the DESD Act.
[15] See *Garvey v Canada (Attorney General)*, 2018 FCA 118; and *Walls v Canada (Attorney General)*, 2022 FCA 47.
[16] The Claimant also gave a copy to the Commission, which it included in the reconsideration file it sent to the Tribunal, at GD3-20.
[17] See GD3-61, GD3-63, and GD3-64.
[18] See GD2-5.

[24] In paragraphs 16 and 17 of its decision, the General Division considered the medical evidence. Based on my review of the evidence and the General Division paragraphs I set out above, the Claimant hasn't shown an arguable case that the General Division ignored or misunderstood a medical report or other evidence about his COVID-19 infection.

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

There is no other reason to give the Claimant permission to appeal

[26] The Claimant is representing himself. So, I reviewed the appeal file from the General Division and read the General Division decision.[19] I didn't find that the General Division ignored or misunderstood any important evidence I didn't already deal with, above. It didn't decide any legal issues it had no power to decide. It identified and decided the legal issues it had to decide. And it used the correct legal tests when making its decision.

[27] This means there is no arguable case that the General Division made any other error I can consider.

Conclusion

[28] I am denying the Claimant permission to appeal. This means his appeal won't go ahead. And the General Division decision stands unchanged.

Glenn Betteridge
Member, Appeal Division

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[19] 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.