



Citation: *CL v Canada Employment Insurance Commission*, 2024 SST 874

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: C. L

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated
June 11, 2024 (GE-24-1718)

Tribunal member: Glenn Betteridge

Decision date: July 26, 2024

File number: AD-24-409

Decision

[1] C. L. hasn't shown her appeal of the General Division decision has a reasonable chance of success. So, I can't give her permission to go forward with her appeal.

[2] This means the General Division decision stands unchanged.

Overview

[3] C. L. is the Claimant in this case. In 2023, she was unemployed, and an approved Alberta agency referred her to a training course. She was entitled to get EI benefits while she was in that training course.¹

[4] On November 27, 2023, the organization providing the training course expelled her. She told the Commission she was studying for exams between November 28 and December 13, 2023.

[5] The Commission decided that the Claimant was disentitled from getting benefits from November 28 to December 13, 2023 because she wasn't available for work those days. The Commission also decided the Claimant was disqualified from getting benefits for six weeks because she had been expelled from the training course. So, it didn't pay her benefits for eight weeks (from the week of November 26, 2023 through the week of January 20, 2024).

[6] The Commission upheld this decision when she asked it to reconsider. She appealed the Commission's reconsideration decision to the Tribunal's General Division. The General Division dismissed her appeal.

[7] The Claimant has now asked for permission to appeal the General Division decision. I can only give her permission if her appeal has a reasonable chance of

¹ Under section 25(1) of the *Employment Insurance Act* (EI Act), a person who is referred to a training course or program by the Commission or a designated agency is considered to be unemployed and capable and available for work when they are attending the course or program. This allows the Commission to pay them benefits when they are taking the training course.

success. That means the same thing as an arguable case the General Division made an error the law lets me consider.

Issues

[8] I have to decide four issues:

- Is there an arguable case the General Division process or hearing was unfair to the Claimant?
- Is there an arguable case the General Division decided an issue it should not have decided, or didn't decide an issue it should have?
- Is there an arguable case the General Division made a legal error?
- Is there an arguable case the General Division made an important error of fact?

I am not giving the Claimant permission to appeal

[9] To decide whether to give the Claimant permission, I reviewed the General Division appeal file.² I listened to the recording of the General Division hearing and read its decision. And I reviewed the Claimant's Appeal Division application.³

[10] I am not giving the Claimant permission to appeal, for the reasons that follow.

The test for getting permission to appeal

[11] To get permission, the Claimant's appeal has to have a reasonable chance of success.⁴ This means she has to show there is an arguable case the General Division made one of these errors:

² See GD2, GD3, GD4, GD7, and GD8.

³ See AD1 and AD1A.

⁴ Section 58(2) of the *Department of Employment and Social Development Act* (DESD Act) says that I have to give permission to appeal if the appeal has a reasonable chance of success. This means the same as having an "arguable case." See *O'Rourke v Canada (Attorney General)*, 2018 FC 498; *Osaj v Canada (Attorney General)*, 2016 FC 115 at paragraph 12; and *Ingram v Canada (Attorney General)*, 2017 FC 259 at paragraph 16.

- It used an unfair process, prejudged the case, or was biased—this is called a procedural fairness or natural justice error.
- It didn't decide an issue it should have decided, or decided an issue it should not have decided—this is called a jurisdictional error.
- It made a legal error.
- It based its decision on an important factual error.⁵

[12] This test is easy to meet.⁶

There isn't an arguable case the General Division process or hearing was unfair, or the Member was biased or prejudged her case

[13] On her Appeal Division application form, the Claimant checked the box that says the General Division didn't follow procedural fairness. She first argues the decision had "glaring errors in it." She goes on to argue:

I had a feeling he was pretending to do his job which is simply counting the weeks paid out doesn't add up to the 38 even when subtracting the 8 weeks this appeal is about. He completely ignores the filed evidence which shows the program facilitators emails and documents taking away books, denying access to curriculum and opportunities to shadow classes at NAIT, the explosion letter threatening my housing, the foundation learning assistance letter requiring me to pay 3,402 dollars, the paystubs showing I was making 600 dollars a week before this fake school started. He had no intention of even reading the file before making a decision all he did was pretend to listen to me then called me a liar.

[14] The General Division makes an error if it uses an unfair process.⁷ These are called procedural fairness or natural justice errors. The question is whether a person

⁵ These are the grounds of appeal in section 58(1) of the DESD Act. I refer to these ground as errors.

⁶ 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.

⁷ This is a ground of appeal under section 58(1)(a) of the DESD Act.

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.⁸

[15] The legal test to show a tribunal member was biased or prejudged the case is difficult to meet.⁹ A Tribunal member is presumed to be impartial. The person who alleges bias has to show that a reasonably informed person would think, in the circumstances, the decision-maker would not decide fairly.¹⁰

[16] I listened to the General Division hearing. It lasted over 53 minutes. The General Division member reviewed the legal issues in the appeal. He set out the legal tests for those issues. He gave the Claimant a full and fair opportunity to present her case. Then he reviewed the facts and the Claimant's argument that were relevant to the legal test to make sure he understood the Claimant's position. Finally, he gave the Claimant an opportunity to say anything else she wanted to say.

[17] The Claimant didn't raise any concerns with the fairness of the hearing during the hearing.

[18] I reviewed the evidence before the General Division (documents and the Claimant's testimony) and its decision. Nothing shows me it ignored evidence on purpose, didn't have an open mind about the outcome in the appeal, or was biased against the Claimant.

[19] The General Division member didn't call the Claimant a liar. And there is no evidence that he didn't read the documents in the General Division file.

⁸ See *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69; and *Kuk v Canada (Attorney General)*, 2024 FCA 74.

⁹ See *Canadian Pacific Railway Company v. Canada (Attorney General)*, 2018 FCA 69; and *Kuk v Canada (Attorney General)*, 2024 FCA 74.

¹⁰ This is a plain language statement of the legal test the Supreme Court of Canada set out in *Committee for Justice and Liberty v National Energy Board*, [1978] 1 SCR 369 at page 394. The Court said the test is, "what would an informed person, viewing the matter realistically and practically—and having thought the matter through—conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly."

[20] So the Claimant hasn't shown there is an arguable case the General Division process or hearing was unfair, or the Member prejudged the case or was biased.

There isn't an arguable case the General Division made a jurisdictional error

[21] On her Appeal Division application form, the Claimant checked the box that says the General Division made an error of jurisdiction. She doesn't give any reasons to back that up.

[22] The General Division makes an error if it acts beyond or refuses to exercise its decision-making power.¹¹ In other words, the General Division makes an error if it decides an issue it has no power to decide or doesn't decide an issue it has to decide. In law these are called jurisdictional errors.

[23] In its decision, the General Division identified and decided the issues it had to decide:

- availability (paragraphs 2, 12 to 36, and 50)
- end of the referred training (paragraphs 4, 37 to 47, and 52)
- the correct number of weeks the Commission couldn't pay the Claimant benefits based on the disentitlement (because she didn't prove she was available for approximately two weeks) and the disqualification for six weeks (because she didn't have good cause for leaving her training course) (paragraphs 40 note 11, 47, 48 and 49)

[24] The General Division didn't decide any issues it didn't have the power to decide.

[25] So the Claimant hasn't shown there is an arguable case the General Division made a jurisdictional error.

¹¹ Section 58(1)(a) of the DESD Act says it's a ground of appeal where the General Division acts beyond or refuses to exercise its jurisdiction.

There isn't an arguable case the General Division made a legal error

[26] On her Appeal Division application form, the Claimant checked the box that says the General Division made an error of law. She doesn't give any reasons to back that up.

[27] The General Division makes a legal error when it ignores an argument it has to consider, doesn't give adequate reasons for its decision, misinterprets a law, applies the wrong legal test, or doesn't follow a court decision it has to follow.

[28] The General Division correctly stated and explained the legal tests it had to apply—both at the hearing and in its decision. In its decision it referenced then used the correct sections of the *Employment Insurance Act* (EI Act) and *Employment Insurance Regulations* (EI Regulations) and the court decisions it had to follow.¹² And it didn't misinterpret the law or court decisions.

[29] The General Division properly relied on the EI *Digest of Benefit Entitlement Principles* (Digest).¹³ The Digest sections it cited explain—but don't go against—the law it had to apply.¹⁴

[30] So the Claimant hasn't shown there is an arguable case the General Division made a legal error.

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

[31] On her Appeal Division application form, the Claimant checked the box that says the General Division made an important error of fact. She argues, "He completely ignores the filed evidence which shows the program facilitators emails and documents taking away books, denying access to curriculum and opportunities to shadow classes at NAIT, the explosion letter threatening my housing, the foundation learning assistance

¹² See the General Division decision at paragraphs 5, 6, 13 to 15, 18, 19, 26, 27, 30, and 39 to 42.

¹³ See that document on-line at www.canada.ca/en/employment-social-development/programs/ei/ei-list/reports/digest.html.

¹⁴ See the General Division decision at paragraphs 40, 41, and 47.

letter requiring me to pay 3,402 dollars, the paystubs showing I was making 600 dollars a week before this fake school started.”

[32] The General Division makes an important factual error if it bases its decision on a factual finding it made by ignoring or misunderstanding relevant evidence.¹⁵ In other words, if the evidence goes squarely against or doesn’t support a factual finding the General Division had to make to reach its decision.

[33] The law also says I can presume the General Division reviewed all the evidence—it doesn’t have to refer to every piece of evidence.¹⁶

[34] The General Division didn’t ignore or misunderstand the Claimant’s evidence about the training course.¹⁷ The other evidence the Claimant says the General Division ignored wasn’t relevant to the legal issues it had to decide. So, it didn’t have to consider or refer to that evidence.

[35] The Claimant is representing herself in this appeal. So I looked beyond the argument she made to see if there was an arguable case the General Division made any other important factual errors.¹⁸ I didn’t find relevant evidence that the General Division ignored or misunderstood. And its decision is supported by the relevant evidence it had to consider.

[36] This means there isn’t an arguable case the General Division made an important factual error.

¹⁵ 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 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 Act and the cases that have interpreted the Act.

¹⁶ See *Sibbald v Canada (Attorney General)*, 2022 FCA 157 at paragraph 46.

¹⁷ See the General Division decision at paragraphs 45 and 45.

¹⁸ 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.

Conclusion

[37] The Claimant hasn't shown an arguable case the General Division made an error the law lets me consider. In other words, her appeal doesn't have a reasonable chance of success.

[38] This means I can't give her permission to appeal the General Division decision. Her appeal won't go ahead, and the General Division decision stands unchanged.

Glenn Betteridge
Member, Appeal Division