



Citation: *MG v Canada Employment Insurance Commission*, 2024 SST 1275

## Social Security Tribunal of Canada Appeal Division

# Decision

**Appellant:** M. G.

**Respondent:** Canada Employment Insurance Commission  
**Representative:** Kevin Goodwin

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**Decision under appeal:** General Division decision dated  
July 5, 2024 (GE-24-1408)

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**Tribunal member:** Glenn Betteridge

**Type of hearing:** In Writing

**Decision date:** October 23, 2024

**File number:** AD-24-509

## Decision

[1] I am dismissing M. G.'s appeal. He hasn't shown the General Division made an error.

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

## Overview

[3] M. G. is the Claimant. He made a claim for Employment Insurance (EI) regular benefits.

[4] The Canada Employment Insurance Commission (Commission) decided he wasn't entitled to benefits. He hadn't shown he was available for work. He did not get vaccinated against COVID. He got sick with COVID. Then he was injured in a car accident and received private income replacement benefits for about six months.

[5] The Claimant asked the Commission to reconsider. The Commission refused to change its decision. The Claimant appealed to this Tribunal's General Division. The General Division went ahead with the teleconference hearing without the Claimant. It dismissed his appeal because he hadn't shown he was available for work.

[6] I gave the Claimant permission to appeal because the General Division might have treated him unfairly when it went ahead with the hearing without him. He says the General Division made three errors. The Commission says the General Division didn't make any errors. I agree with the Commission.

## Issues

[7] I have to decide two issues.

- Did the General Division use an unfair process by going ahead with the hearing without the Claimant?
- Did the General Division make another type of error the law lets me consider?

[8] This appeal was in writing. To decide these issues, I read the General Division decision and reviewed the documents in the General Division file.<sup>1</sup> I added documents from outside the General Division file and sent them to the parties.<sup>2</sup> I also read the Claimant's application to the Appeal Division and the Commission's legal arguments.<sup>3</sup>

## Analysis

[9] The Appeal Division's role is different than the General Division's role. The law lets me step in and fix a General Division error where a party can show the General Division used an unfair process, or made a legal error, a jurisdictional error, or an important factual error.<sup>4</sup>

[10] If I find the General Division didn't make an error, I have to dismiss the Claimant's appeal.

[11] The *Employment Insurance Act* (EI Act) says to get regular benefits a person has to be available for work.<sup>5</sup> This means they have to show they are actively looking for a suitable job on an ongoing basis. They haven't set personal conditions that unduly limit their chances of returning to work. And they will take a suitable job if they get an offer.

[12] The General Division decided the Claimant hadn't shown he was available for work. For the reasons that follow, I am dismissing the Claimant's appeal of that decision.

## The General Division process was fair

[13] The Claimant checked the box on the application that says the General Division didn't follow procedural fairness.<sup>6</sup> He argued: "I asked 5 business day prior to have the

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<sup>1</sup> See GD2, GD2A, GD3, GD4, GD5, GD6, GD7, and GD8.

<sup>2</sup> See AD3.

<sup>3</sup> See AD1, AD1B, and AD6.

<sup>4</sup> Section 58(1) of the *Department of Employment and Social Development Act* (DESD Act) calls these the "grounds of appeal." I have called them errors. Section 59(1) of the DESD Act gives the Appeal Division the power to fix General Division errors.

<sup>5</sup> See sections 18(1)(a) and 50(8) of the *Employment Insurance Act* (EI Act).

<sup>6</sup> See AD1-4.

hearing date changed and from in-person to teleconference. The Tribunal didn't sent him a new notice in time of hearing to make this change."

[14] The Claimant didn't log on to the teleconference hearing. The General Division went ahead with the hearing anyway. The Tribunal can do that where it believes the person got the notice of hearing.<sup>7</sup> The General Division found the Claimant got the notice of hearing.<sup>8</sup>

[15] The General Division makes an error if it uses an unfair process.<sup>9</sup> 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.<sup>10</sup>

[16] The Claimant filed two rescheduling requests.<sup>11</sup> The General Division granted the first one. It changed the date of the hearing and changed the hearing format to an in-person hearing.<sup>12</sup>

[17] In his second rescheduling request, he wrote:

I am writing this letter to inform the S.S.T, there is a major error, and to reschedule my in person appointment for June 20th, 2024 at 1;30pm, to a phone conference call/meeting. I was told to have some specific document on hand for review/reference, can please give a list of all the documents needed.<sup>13</sup>

[18] The General Division changed the hearing format to a teleconference hearing. And it sent the Claimant a new notice of hearing.<sup>14</sup>

[19] It seems the Claimant is arguing he didn't go to that hearing because he was waiting for the Tribunal to change the date of the hearing. In other words, he intended to

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<sup>7</sup> See section 58 of the *Social Security Tribunal Rules of Procedure* (Tribunal Rules).

<sup>8</sup> See the General Division decision at paragraphs 9 to 11.

<sup>9</sup> This is a ground of appeal under section 58(1)(a) of the DESD Act.

<sup>10</sup> See *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69; and *Kuk v Canada (Attorney General)*, 2024 FCA 74.

<sup>11</sup> See GD5 and GD7.

<sup>12</sup> See GD6.

<sup>13</sup> See GD7.

<sup>14</sup> See GD8.

ask for two changes in his second request—to the hearing format **and to the hearing date**. The General Division changed the hearing format.

[20] The General Division considered the evidence and found the Claimant received the new notice of hearing. It didn't ignore or misunderstand the evidence about this. So, I have to accept the General Division's finding.

[21] The Commission argues the Claimant had the time between April 30 and June 20, 2024 to prepare for the hearing.<sup>15</sup> It argues he received the new notice of hearing between June 14 and June 20, 2024. So, he had time to contact the Tribunal to clear up any misunderstanding.

[22] I agree with the Commission.

[23] The Claimant knew the case he had to meet. He received the Commission's reconsideration file and written arguments in April 2024.<sup>16</sup> The General Division gave the Claimant a full and fair opportunity to make his case. He could have sent evidence and arguments before the hearing. The Tribunal scheduled a hearing on June 20, 2024. He got notice of that hearing. But he didn't act on that opportunity to make his case.

[24] The Claimant was making his second request to reschedule.<sup>17</sup> He wasn't clear about what he was asking for. Under the Tribunal Rules, he had no right to have his hearing rescheduled a second time. He had to show that rescheduling was necessary for a fair hearing.

[25] It was the Claimant's responsibility. He had to clear up any misunderstanding before the hearing. Or he had to attend the hearing and ask the General Division to reschedule. He did neither.

[26] The Claimant should not have assumed the Tribunal would reschedule the hearing a second time because that's what he wanted. Or assumed that it would

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<sup>15</sup> See AD6-6.

<sup>16</sup> The Tribunal emailed the Claimant GD3 and GD4 on April 17, 2024.

<sup>17</sup> See section 43 of the Tribunal Rules.

reschedule the hearing a second time because it rescheduled it the first time he asked. These assumptions go against the Tribunal Rules.

[27] So, the Claimant hasn't shown the General Division used an unfair process when it went ahead with the hearing without him.

### **The General Division didn't make another type of error the law lets me consider**

[28] The Claimant checked the boxes that say the General Division made an error of jurisdiction and an important factual error.<sup>18</sup>

[29] The General Division makes a jurisdictional error if it acts beyond or refuses to exercise its decision-making power.<sup>19</sup> In other words, it makes an error if it decides an issue it has no power to decide or doesn't decide an issue it has to decide.

[30] 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.<sup>20</sup> In other words, there is evidence that goes squarely against or doesn't support a factual finding the General Division made to reach its decision.

[31] The Claimant is rearguing his case and adding an extra issue that wasn't before the General Division.<sup>21</sup> He says he was available for work. He disagrees that his conduct was misconduct. But he doesn't point to any General Division errors—no jurisdictional errors or important factual errors.

[32] The Claimant's availability for work was the only issue in the General Division appeal. The Claimant confirmed this in writing.<sup>22</sup> The General Division addressed this at

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<sup>18</sup> See AD1-4.

<sup>19</sup> 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.

<sup>20</sup> 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.

<sup>21</sup> See the Claimant's grounds 1, 2, 3, 5, and 6 on AD1-4 and AD1B-4.

<sup>22</sup> See GD2A.

paragraphs 6 to 8 of its decision. Then it decided the availability issue. And it didn't decide an issue it had no power to decide.

[33] The General Division correctly set out the law it had to apply (paragraphs 13 to 15, 19, 21, and 22). It applied that law to findings of fact it made after considering the relevant evidence about his availability for work (paragraphs 16 to 18 and 23 to 35). The Claimant hasn't pointed to relevant evidence the General Division ignored or misunderstood. And I didn't find any.

[34] This means the Claimant hasn't shown the General Division made a jurisdictional error, a legal error, or an important factual error.

## **Conclusion**

[35] I am dismissing the Claimant's appeal because he hasn't shown the General Division made an error.

Glenn Betteridge  
Member, Appeal Division