



Citation: *HH v Canada Employment Insurance Commission*, 2024 SST 1293

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: H. H.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated
October 7, 2024 (GE-24-2674)

Tribunal member: Glenn Betteridge

Decision date: October 24, 2024

File number: AD-24-712

Decision

[1] I am not giving H. H. permission to appeal the General Division decision.

[2] This means her appeal won't go forward, and the General Division decision stands unchanged.

Overview

[3] H. H. is the Claimant. The Canada Employment Insurance Commission (Commission) paid her Employment Insurance (EI) regular benefits.

[4] Later, the Commission reviewed her claim. It decided she wasn't capable of or available for work from April 3 to August 20, 2022. This meant she wasn't entitled to the EI benefits. So, she had to repay \$8,949 to the Commission.

[5] The Claimant asked the Commission to reconsider. It didn't change its decision. So, she appealed to this Tribunal's General Division.

[6] The General Division dismissed her appeal. It decided she wasn't capable of working when she received EI regular benefits because of health problems. It also decided she wasn't available for work then because she didn't do enough to look for work.

[7] The Claimant asked for permission to appeal the General Division decision. She argues the General Division made important factual errors about the medical evidence and her job search efforts. To get permission, the Claimant has to show her appeal has a reasonable chance of success. Unfortunately, she hasn't.

Issues

[8] I have to decide two issues.

- Is there an arguable case the General Division made an important factual error?

- Is there an arguable case the General Division made any other error?

I am not giving the Claimant permission to appeal

[9] I read the General Division decision. I reviewed the documents in the General Division file and listened to the hearing recording.¹ And I read the Claimant’s application to appeal.²

[10] The *Employment Insurance Act* (EI Act) says to get EI regular benefits the Claimant had to show she was capable of work and available for work.³ The General Division decided she wasn’t capable or available for work from April 3 to August 20, 2022. This meant she got benefits she wasn’t entitled to keep. So, she has to pay back those benefits.

[11] I can’t give the Claimant permission to appeal the General Division decision, for the reasons that follow.

The test for getting permission to appeal

[12] 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 an error the law lets me consider.

- The General Division used an unfair process, prejudged the case, or was biased. (This is a procedural fairness or natural justice error.)
- The General Division didn’t decide an issue it should have decided, or decided an issue it should not have decided. (This is a jurisdictional error.)
- The General Division made a legal error.

¹ See GD2, GD3, and GD4.

² See AD1.

³ See sections 18(1)(a) and 50(8) of the *Employment Insurance Act* (EI Act).

⁴ See section 58(2) of the *Department of Employment and Social Development Act* (DESD Act). 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.

- The General Division made an important factual error.⁵

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

[13] 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.⁶ In other words, some relevant evidence goes squarely against or doesn't support a factual finding the General Division made to reach its decision.

[14] On her application to appeal form, the Claimant says the General Division made an important error of fact.⁷ She explained it made two errors. I will consider each.

– The General Division considered and weighed the medical evidence and there isn't an arguable case it misunderstood or ignored any evidence

[15] First, the Claimant argues the General Division misunderstood one of the medical reports.⁸ She says her doctor corrected that report. She says the medical reports show she was capable of work from April 3 to August 12, 2022.

[16] At the hearing, the General Division Member and the Claimant reviewed the medical reports.⁹ The Member asked questions about the information in the medical reports, and when and why her doctors wrote the reports. The Claimant explained the corrections one doctor made.¹⁰ And she gave evidence about her health condition, her symptoms, her treatment, and her capacity to work.

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

⁶ 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 describe this ground of appeal using plain language, based on the words in the Act and the court decisions that have interpreted the Act.

⁷ See AD1-4.

⁸ See AD1-6.

⁹ See GD3-51, GD3-54, and GD3-77.

¹⁰ Listen to the recording of the General Division hearing from 50:26 to 1:10:00, and from 1:22:10 to 1:24:02.

[17] It's the General Division's job to review and weigh the evidence.¹¹ I can't reweigh the evidence or substitute my view of the facts.

[18] The General Division reviewed and weighed the evidence about her capability to work from April 3 to August 20, 2022 (paragraphs 23 to 31). Then it decided the Claimant wasn't capable of working during that time (paragraphs 32 and 33).

[19] I reviewed the evidence—the documents and the Claimant's testimony. I didn't find relevant medical evidence the General Division misunderstood or ignored.

[20] In other words, the General Division's finding the Claimant wasn't capable of work from April 3 to August 20, 2022 is supported by the evidence.

– **The General Division considered the evidence about the Claimant's job search efforts from April 3 to August 20, 2022**

[21] Second, the Claimant argues the General Division's finding that she didn't make enough efforts to find a suitable job is unreasonable.¹² She refers to paragraphs 38, 42, 43, 44, and 51 to 54 of the decision.

[22] The Claimant doesn't point to specific evidence the General Division misunderstood or ignored. She is restating her evidence and arguments. And she argues the General Division made an error when it didn't decide the availability issue based on all the evidence of her job search throughout the time she was unemployed.

[23] Simply disagreeing with the General Division's finding isn't a valid ground of appeal.¹³ And the Claimant can't use the Appeal Division process to reargue her case, hoping for a different outcome.

[24] The General Division had to consider the relevant evidence of the Claimant's job search efforts. Relevant means evidence about the period she received EI regular benefits—from April 3 to August 20, 2022.

¹¹ See *Tracey v Canada (Attorney General)*, 2015 FC 1300 at paragraph 33.

¹² See AD1-6.

¹³ See *Griffin v Canada (Attorney General)*, 2016 FC 874 at paragraph 20.

[25] The General Division reviewed and weighed the evidence (paragraphs 37 to 40, 42, 43, and 53). She testified she applied to one job between April 3 and August 20, 2022. Based on that evidence, the General Division found she didn't make reasonable and customary efforts to find a job. It also found she didn't make enough efforts to find a suitable job. This meant she hadn't shown she was available for work under sections 50(8) and 18(1)(a) of the EI Act.

[26] I didn't find relevant evidence the General Division misunderstood or ignored. In other words, the General Division's finding the Claimant wasn't available for work from April 3 to August 20, 2022 is supported by the evidence.

– **Summary**

[27] The General Division's findings about the Claimant's capability to work and about her availability for work are supported by the relevant evidence. This means there isn't an arguable case the General Division made an important factual error.

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

[28] The Claimant is representing herself. So, I considered whether there was an arguable case the General Division made any other error.¹⁴

[29] The General Division identified the issues it had to decide (paragraph 15), then decided those issues. It didn't decide an issue it had no power to decide.

[30] The General Division correctly stated the legal tests it had to use to decide whether the Claimant was capable and available for work (paragraphs 16 to 20, 35 and 36, 46 and 47). Then it used those legal tests to make findings about the Claimant's capacity to work and availability for work.

[31] Nothing I read or heard made me think the General Division process—including the hearing—might have been unfair to the Claimant.

¹⁴ I should not apply the permission to appeal test in a mechanistic manner. 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.

[32] This means there isn't an arguable case the General Division made any other error the law lets me consider.

Conclusion

[33] The Claimant hasn't shown her appeal has a reasonable chance of success. This means I can't give her permission to appeal the General Division decision.

Glenn Betteridge
Member, Appeal Division