



Citation: *BU v Canada Employment Insurance Commission*, 2025 SST 10

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

**Applicant:** B. U.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated December 17, 2024  
(GE-24-2656)

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**Tribunal member:** Glenn Betteridge

**Decision date:** January 6, 2025

**File number:** AD-24-863

## Decision

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

[2] This means his appeal won't go forward. And the General Division decision stands unchanged.

## Overview

[3] B. U. is the Claimant. He made two claims for Employment Insurance (EI) regular benefits, in August 2023 and November 2023.

[4] The Commission decided it could not pay him benefits. He hadn't worked enough hours to qualify. He needed 700 hours. He had 340 hours from his job at the garden centre.

[5] The Commission could not use the hours from his grocery store job because he voluntarily left that job without just cause.<sup>1</sup> (Another General Division member decided the voluntary leaving issue in a separate appeal. The Appeal Division didn't give the Claimant permission to appeal that decision.)

[6] The General Division agreed with the Commission and dismissed his appeal.

[7] The Claimant has asked for permission to appeal the General Division decision. To get permission, he has to show his appeal has a reasonable chance of success. Unfortunately, he hasn't.

## Issue

[8] I have to decide whether the Claimant has shown his appeal has a reasonable chance of success.

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<sup>1</sup> See section 30 of the *Employment Insurance Act* (EI Act). Where a person voluntarily leaves their job without just cause, they are disqualified from getting benefits. Under section 30(5), they can't use the hours they worked in that job to qualify for benefits.

## **I am not giving the Claimant permission to appeal**

[9] I read the Claimant's application to appeal.<sup>2</sup> I read the General Division decision the Claimant has appealed (and the decision from the Appeal Division, which sent the appeal back to the General Division to reconsider).<sup>3</sup> I reviewed the documents in the General Division files.<sup>4</sup>

[10] The Claimant continues to fight a different appeal. He lost that appeal.<sup>5</sup> The issue was whether he was disqualified from getting EI benefits because he voluntarily left his grocery store job without just cause. This meant he could not use the hours from his grocery store job to qualify for benefits. He filed a Federal Court review but discontinued it.<sup>6</sup>

[11] The General Division could not consider or decide the voluntary leaving issue in this appeal. And I can't either.

[12] The issue in this appeal is straightforward. Did the Claimant work enough hours to qualify for EI benefits? As I explain below, the Claimant hasn't shown an arguable case the General Division made an error when it dismissed his appeal. So, I can't give him permission to appeal.

## **The test for getting permission to appeal**

[13] To get permission, the Claimant's appeal has to have a reasonable chance of success.<sup>7</sup> This means he has to show there is an arguable case the General Division used an unfair process, or made a jurisdictional error, a legal error, or an important factual error.<sup>8</sup>

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<sup>2</sup> See ADN1.

<sup>3</sup> See the General Division decision in GE-24-2656 and the Appeal Division decision in AD-24-355.

<sup>4</sup> See GD2, GD3, GD4, and RGD2 to RGD12.

<sup>5</sup> See the General Division decision in GE-23-1182, and the Appeal Division decision in AD-23-883.

<sup>6</sup> See Federal Court file number T-2688-23.

<sup>7</sup> See section 58(2) of the *Department of Employment and Social Development Act* (DESD Act).

<sup>8</sup> These are the grounds of appeal in section 58(1) of the DESD Act. I call them errors. And see *Brown v Canada (Attorney General)*, 2024 FC 1544 at paragraph 41, citing *Osaj v Canada (Attorney General)*, 2016 FC 115 at paragraph 12.

[14] I have to start by considering the grounds of appeal the Claimant set out in his application.<sup>9</sup> The Claimant checked the important error of fact box.<sup>10</sup> In his reasons he argues the General Division used an unfair process and made a jurisdictional error.<sup>11</sup>

[15] I will consider these three errors, one at a time.

### **The Claimant hasn't shown an arguable case the General Division made a jurisdictional error**

[16] There isn't an arguable case the General Division decided an issue it had no power to decide or failed to decide an issue it should have decided. In other words, there isn't an arguable case it made a jurisdictional error.

[17] The General Division could not consider the voluntary leaving issue. It could only consider whether the Claimant worked enough hours to qualify for benefits. It correctly identified that issue (paragraph 43). And it decided only that issue, for his August 2023 application and his November 2023 application.

[18] The General Division explained why it could not consider the voluntary leaving issue (paragraphs 37 to 42). And why the law prevented it from counting the hours he worked in the grocery store job he quit (paragraphs 67 to 69, and 84 to 86).

[19] The Claimant also argues the General Division made a jurisdictional error by going on at length disputing the Appeal Division decision that returned his appeal to the General Division (AD-24-355).<sup>12</sup>

[20] I disagree.

[21] The General Division disagreed with the Appeal Division's findings about the Commission's decision letters (paragraphs 6 to 36).

[22] There isn't an arguable case this was jurisdictional error.

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<sup>9</sup> See *Twardowski v Canada (Attorney General)*, 2024 FC 1326 at paragraph 26.

<sup>10</sup> See ADN1-4.

<sup>11</sup> See ADN1-5.

<sup>12</sup> See ADN1-5.

[23] The General Division followed the Appeal Division's direction. It asked the Commission to complete its reconsideration and issue a reconsideration decision (paragraphs 34 to 36). The Commission did that. And the General Division considered and decided the Claimant's appeal of the Commission's decision that he didn't qualify for benefits.

[24] The General Division's disagreement with the Appeal Division didn't affect the issue it had to decide. And the General Division didn't make any legally binding findings in those paragraphs of its decision. This means the General Division didn't improperly use its decision-making power when it disagreed with parts of the Appeal Division decision. And the Claimant hasn't shown an arguable case the General Division made a jurisdictional error.

### **The Claimant hasn't shown an arguable case the General Division made an important factual error**

[25] The Claimant says the General Division made an error when it didn't consider a document (a ROE from the grocery store).<sup>13</sup> He argues the ROE was evidence the Commission never considered. He says it shows he stopped his grocery job because of a company reorganization and a shortage of work—not because he quit.

[26] The General Division makes an important factual error when it ignores or makes a mistake about the evidence, goes on to make a finding of fact, and bases its decision on that flawed finding of fact.

[27] The General Division didn't have to consider the grocery store ROE or decide whether the Claimant quit his grocery store job. The Tribunal had already decided this issue in another appeal. It decided he voluntarily left without just cause. And this meant he could not use hours from his grocery store job to qualify for benefits.

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<sup>13</sup> See RGD12-15.

[28] So, the ROE (including the reason for separation and insurable hours) wasn't relevant to the issue the General Division had to decide. Legally, it didn't have to consider the ROE. It could ignore it.

[29] So, there isn't an arguable case the General Division made an important factual error when it didn't consider the ROE.

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

[30] The Claimant argues that the General Division didn't follow procedural fairness because it didn't consider his evidence and arguments.<sup>14</sup> It focused on and accepted the Commission's arguments. He argues the overwhelming evidence and his arguments show he lost his grocery store job due to a shortage of work.

[31] The General Division makes an error if it uses an unfair process.<sup>15</sup> The question is whether a person knew the case they had to meet, had a full and fair opportunity to present their case, and had an impartial decision-maker consider and decide their case.<sup>16</sup>

[32] The Claimant hasn't shown an arguable case the General Division used an unfair process.

[33] The Claimant chose to re-argue the voluntary leaving appeal the Tribunal had already decided in another appeal. That issue wasn't before the General Division.

[34] The General Division gave the Claimant a full and fair opportunity to know the case he had to meet and present evidence and arguments to meet that case. The Claimant chose a written appeal process.<sup>17</sup> The General Division wrote to the Claimant and asked him questions—based on the Commission's evidence and arguments—

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<sup>14</sup> See ADN1-5.

<sup>15</sup> This is a ground of appeal under section 58(1)(a) of the DESD Act.

<sup>16</sup> See *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69; and *Kuk v Canada (Attorney General)*, 2024 FCA 74.

<sup>17</sup> See RGD8.

about the issue it had to decide.<sup>18</sup> And it granted his request for more time to respond to that letter.<sup>19</sup>

[35] The Claimant argues the General Division Member reviewed his claim subjectively favouring the Commission or failed to grasp the main point of his claim.<sup>20</sup> Unfortunately for the Claimant, the opposite seems to be true.

[36] 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.<sup>21</sup> This is difficult to show.<sup>22</sup>

[37] The Claimant was unwilling or unable to understand the legal issue in his appeal and the evidence that was (and wasn't) relevant to that issue. The General Division had no power to decide the grocery store job voluntary leaving issue. The General Division explained this clearly and in sufficient detail in its decision (paragraphs 37 to 42, 67 to 69, and 84 to 86).

[38] The General Division agreed with the Commission's submissions and explained why. That doesn't show a bias. The legal issue was straightforward. And unlike the Claimant, the Commission cited the correct law and focused on the relevant evidence.

[39] Given these circumstances, a reasonably informed person would not think the General Division Member did not decide the Claimant's appeal fairly.

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

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<sup>18</sup> See RGD9.

<sup>19</sup> See RGD10 and RGD11.

<sup>20</sup> See ADN1-5.

<sup>21</sup> See *Committee for Justice and Liberty v National Energy Board*, [1978] 1 SCR 369 at page 394.

<sup>22</sup> See *Canadian Pacific Railway Company v. Canada (Attorney General)*, 2018 FCA 69; and *Kuk v Canada (Attorney General)*, 2024 FCA 74.

## **Conclusion**

[41] The Claimant hasn't shown an arguable case the General Division made an error that the law left me consider.

[42] So, his appeal doesn't have a reasonable chance of success. And I can't give him permission to appeal the General Division decision.

Glenn Betteridge  
Member, Appeal Division