



Citation: *TH v Canada Employment Insurance Commission*, 2025 SST 22

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

# **Decision**

**Appellant:** T. H.

**Respondent:** Canada Employment Insurance Commission  
**Representative:** Claude Germain

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**Decision under appeal:** General Division decision dated July 30, 2024  
(GE-24-2360)

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**Tribunal member:** Glenn Betteridge

**Type of hearing:** In Writing

**Decision date:** January 10, 2025

**File number:** AD-24-661

## Decision

[1] I am dismissing T. H.'s appeal because the General Division didn't make an error.

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

## Overview

[3] T. H. is the Claimant. He made a claim for Employment Insurance (EI) regular benefits. He had knee problems, walked with a cane, and didn't drive. He was waiting to get a family doctor so he could get his knee assessed.

[4] The Canada Employment Insurance Commission (Commission) decided he wasn't entitled to regular benefits. It said he didn't show he was capable of and available for work.<sup>1</sup> He asked the Commission to reconsider. It upheld its decision. He appealed.

[5] The General Division dismissed the Claimant's appeal. It decided he hadn't shown he was capable of working or shown he was available for work.

[6] I gave him permission to appeal the General Division decision. I thought there was an arguable case the General Division process wasn't fair to him.

[7] The Claimant is basically rearguing his appeal of the Commission's decision. He didn't point to an error the General Division made. The Commission says the General Division didn't make an error, so I should dismiss his appeal.

[8] I agree with the Commission, for the reasons that follow.

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<sup>1</sup> Under section 18(1)(a) of the *Employment Insurance Act* (EI Act), a person who wants to get regular benefits has to show for every working day they are capable of and available for work but unable to get a suitable job.

## Preliminary matter

[9] In his application to appeal the General Division decision, the Claimant chose a written appeal process.

[10] After I gave him permission to appeal, he didn't send the Tribunal written arguments or respond to the Commission's written arguments. I asked the Tribunal's registry staff to call him. He confirmed he hadn't sent written arguments and would not be sending any.

[11] So, I went ahead and decided the Claimant's appeal.

## Issue

[12] I have to decide whether the Claimant has shown the General Division made an error when it dismissed his appeal.

## Analysis

[13] The Appeal Division's role is different than the General Division's role. The Appeal Division can remedy (fix) a General Division decision where a person shows the General Division used an unfair process, or made a legal error, a jurisdictional error, or an important factual error.<sup>2</sup>

[14] If I find the General Division process was fair and it didn't make an error, I have to dismiss the Claimant's appeal.

## The Claimant's reasons for appealing

[15] The Claimant didn't check any error box on his application to appeal. But he wrote it took him a while to get a family doctor to diagnose his knee.<sup>3</sup> He says he doesn't drive, and he uses a cane. He included a medical imaging report dated July 26,

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<sup>2</sup> Section 58(1) of the *Department of Employment and Social Development Act* (DESD Act) calls these the "grounds of appeal." I call them errors. Section 59(1) of the DESD Act gives the Appeal Division powers to fix General Division errors.

<sup>3</sup> See AD1-2.

2024.<sup>4</sup> The report says his right knee has mild early degenerative changes in the medial compartment.

[16] Unfortunately, the Appeal Division can't consider new evidence (that wasn't in front of the General Division) unless it meets an exception.<sup>5</sup> The Claimant's medical imaging report doesn't meet an exception. So, I can't consider the report when I decide whether the General Division made an error.

### **People who want regular benefits have to show they are capable of working and available for work**

[17] The *Employment Insurance Act* (EI Act) says to get regular benefits a person has to be capable of working **and** available for work.<sup>6</sup>

[18] To show they are available for work, a person has to show three things.<sup>7</sup> They want to get back to work and will take a suitable job if they get an offer. 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.

[19] The General Division dismissed the Claimant's appeal.

[20] The General Division decided the Claimant hadn't shown he was capable of working. He didn't respond to the General Division's questions about his capability to work, or whether he had a medical assessment (paragraph 34). This meant there wasn't evidence about whether he needed an accommodation of his knee injury in order to work (paragraph 35).

[21] The General Division also decided he hadn't proven he was available for work. It found he hadn't made enough efforts to find a suitable job (paragraphs 23 to 26).

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<sup>4</sup> See AD1-7.

<sup>5</sup> See *Sibbald v Canada (Attorney General)*, 2022 FCA 157 at paragraphs 37 to 40.

<sup>6</sup> See section 18(1)(a) of the EI Act.

<sup>7</sup> These are the three *Faucher* factors the Tribunal has to use to decide whether a person is available under section 18(1)(a) of the EI Act.

[22] For the reasons that follow, I am dismissing the Claimant's appeal of the General Division decision.

### **The General Division process was fair**

[23] In the Leave to Appeal decision, I said there was an arguable case the General Division used an unfair process.

[24] I explained the Claimant chose a written process at the General Division. The General Division emailed him a letter with nine questions (GD letter). He didn't respond by the deadline the General Division set. The General Division looked at the facts and the law and found that he received the email but didn't respond (paragraphs 6 to 8).

[25] So, the General Division went ahead and dismissed the Claimant's appeal. That decision was dated July 30, 2024.

[26] On September 10, 2024, the Tribunal received a letter from the Claimant. It was dated September 5, 2024. He sent it by regular mail. The Claimant apologizes for his late reply to the GD letter. He asks the Tribunal to communicate with him by mail because he has no internet access.

[27] This sequence of events suggested that the Claimant might not have had a full and fair opportunity to present his case. He didn't get the chance to answer the GD letter before it made its decision. This wasn't the General Division's fault because it didn't know he lost internet access.

### **– The Commission's position and arguments**

[28] The Commission says the General Division didn't make a procedural fairness error.<sup>8</sup> It makes four arguments to support its position.

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<sup>8</sup> See AD4-6.

- First, there is no evidence to determine the date the Claimant lost his internet access. He may have had internet access when the Tribunal sent him the letter but didn't say when he got the letter.
  - Second, he could have responded to the letter by July 30, 2024, when the General Division made its decision. The medical report was transcribed July 25, 2024. So, he could have sent his response to the GD letter.
  - Third, the General Division could not consider the Claimant's late evidence, because he didn't meet the deadline. It relies on section 42(1) of the *Social Security Tribunal Rules of Procedure* (SST Rules).
  - Fourth, the General Division did its job properly when it made its decision efficiently and expeditiously. It relies on the *Bosse* decision from the Federal Court, which says the Tribunal should be allowed a certain amount of administrative flexibility without compromising accessibility, efficiency, and speed.<sup>9</sup>
- **I don't accept the Commission's arguments, but I find the General Division process wasn't unfair to the Claimant for other reasons**

[29] I am not persuaded by the Commission's arguments. Even so, I have decided the General Division used a fair process.

[30] Procedural fairness is more important than efficiency and speed. And accessibility is an important part of a fair process—it means taking into account the circumstances of the claimants who use the Tribunal's services.<sup>10</sup>

[31] The SST Rules are meant to promote access to justice, not restrict it. Section 8(1) says the Tribunal must make sure the appeal process is as simple and quick **as fairness allows**. And section 8(4) lets the Tribunal adapt the rules when it's in the interests of justice.

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<sup>9</sup> See *Bosse v Canada (Attorney General)*, 2015 FC 1142 at paragraph 33.

<sup>10</sup> See section 6 of the *Social Security Tribunal Rules of Procedure* (SST Rules).

[32] Here is the first—and in my opinion, more important—sentence from the paragraph of the *Bosse* decision the Commission cites: “The purpose of the Act, the nature of the rights concerned, the Tribunal’s operational constraints, the Tribunal’s specific clients, and all other relevant factors must be taken into account in order to identify the extent of the rules of procedural fairness.” This is a succinct and accurate statement of the law about the duty of procedural fairness a decision-maker owes to a party.

[33] When I consider the relevant factors in the Claimant’s appeal, I find the General Division process was fair to him. In other words, the General Division fulfilled the duty of procedural fairness it owed to the Claimant.

[34] Here are the factors I considered:

- The Claimant appealed a Commission decision denying him EI regular benefits. The appeal form he completed and filed with the Tribunal is written in plain language. The Tribunal’s process has been designed with claimant access in mind.
- On his appeal form, he gave the Tribunal permission to communicate with him by email and gave his email address. The Tribunal used that address to communicate with him.
- The appeal form includes this Tip, “You must tell us if your contact information changes. If we can’t reach you, we may proceed in your absence.”
- On the appeal form, he chose a written process. Here is how the form describes that process: “The General Division member will make their decision based on the written arguments and supporting documents that the parties (including you) send in.”

- The Tribunal confirmed his choice of a written process by emailing him a letter.<sup>11</sup> It says about next steps, “If the Tribunal member doesn’t require any additional information, they will decide the appeal based on the information on file.”
- The SST Rules say the General Division has to decide appeals as simply and quickly as fairness allows.
- Although it didn’t have to, the General Division wrote the Claimant a letter giving him an opportunity to provide information to support his appeal.<sup>12</sup> The letter explained the law and asked nine questions based on the law and the evidence already on file.
- Under section 18(1)(a) of the EI Act, to win his appeal the Claimant had to prove to the General Division he was capable of working and available for work.

[35] The duty of procedural fairness required the General Division to give the Claimant a full and fair **opportunity** to make his case. I find it did that.

[36] The Tribunal informed him in writing about his responsibility to keep his contact information updated, and about the written process he chose. Then the General Division emailed him a letter with specific questions about his appeal. And it gave him time to respond.

[37] A claimant makes choices and has responsibilities in the appeal process. The Claimant chose a written process and chose to communicate with the Tribunal by email. When he lost internet access, it was his responsibility to contact the Tribunal if he wanted the Tribunal to communicate with him in another way. He could have done that by phone. He didn’t do that until more than a month after the General Division decided his appeal. By that time, it was too late.

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<sup>11</sup> See GD1-2.

<sup>12</sup> See GD5.



[38] The evidence shows he received the GD letter because he responded to it. If he got the GD letter before he lost internet access, he could have called the Tribunal to ask for more time to respond.

[39] He knew he had started a written appeal. The Tribunal informed him he was responsible for updating the Tribunal if his contact information changed. He was responsible for sending his evidence to the Tribunal. And he could have asked the General Division for more time to get medical evidence.

[40] I understand the Claimant has lost out on the opportunity to get EI regular benefits. I assume he needed benefits to meet his essential needs. I don't minimize the potential negative consequences for him.

[41] He may have wanted the appeal process to go slower, to allow him to put his best case forward. Unfortunately, he chose an in-writing process, which is designed to move forward more quickly than the oral process, which includes a hearing. And unfortunately, he didn't tell the Tribunal he needed more time and didn't update his contact information.

[42] To summarize this section, I find there isn't an arguable case the General Division used an unfair process. In the circumstances, the General Division gave the Claimant a full and fair opportunity to make his case. Unfortunately, he didn't act on that opportunity as quickly as he needed to.

### **The Claimant hasn't shown the General Division made any other error the law lets me consider**

[43] I reviewed the Claimant's application to appeal the General Division decision and the General Division record.<sup>13</sup>

[44] His reasons for appealing don't refer to the General Division decision. He seems to be making arguments about his capacity to work and his availability. He says he

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<sup>13</sup> See GD1 to GD5.

didn't have a family doctor for years, but now has one to diagnose his knee.<sup>14</sup> He also says he doesn't drive and walks with a cane.<sup>15</sup> He said this in his General Division appeal as well.<sup>16</sup>

[45] Unfortunately, the Appeal Division process isn't the Claimant's chance to reargue his General Division appeal, hoping for a different result. And as I explained above, I can't consider new evidence.

[46] The Claimant has to show the General Division made one of the errors the law lets me consider. He hasn't done that. This means I can't interfere with the General Division decision, and I have to dismiss his appeal.

### **Was the Claimant eligible for EI sickness benefits starting December 3, 2023?**

[47] The Claimant applied for EI regular benefits. The reason he stopped working and his record of employment aren't in the file the Commission sent to the Tribunal.<sup>17</sup>

[48] But if he wasn't capable of working because of his knee problem (alone or in combination with any other medical conditions), he might have been eligible for EI sickness benefits.

[49] This wasn't an issue in his appeal. So, the General Division didn't have the power to consider it, and I don't either.

[50] The Claimant might want to contact the Commission (Service Canada) to ask whether he was eligible for the EI sickness benefit starting December 3, 2023. He should be prepared to give the Commission medical proof he wasn't capable of working at that time.

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<sup>14</sup> See AD1-2.

<sup>15</sup> See AD1-2.

<sup>16</sup> See GD2-4.

<sup>17</sup> See GD3.

## **Conclusion**

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

Glenn Betteridge  
Member, Appeal Division