



Citation: *SB v Canada Employment Insurance Commission*, 2025 SST 32

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: S. B.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated December 9, 2024
(GE-24-3336)

Tribunal member: Solange Losier

Decision date: January 16, 2025

File number: AD-25-14

Decision

[1] Leave (permission) to appeal is refused. The appeal won't proceed.

Overview

[2] S. B. is the Claimant in this case. He applied for Employment Insurance regular benefits (benefits).

[3] The Canada Employment Insurance Commission (Commission) decided that the Claimant wasn't entitled to get benefits because he voluntarily left his job without just cause.¹

[4] The General Division concluded the same.² It decided that the Claimant voluntarily left his job without just cause. It found there were reasonable alternatives.

[5] The Claimant is asking for permission to appeal.³ He argues that the General Division failed to follow a fair process for several reasons and was biased.⁴

[6] I am denying permission to appeal because the Claimant's appeal has no reasonable chance of success.⁵

Preliminary matters

– There was some procedural history with this file

[7] The General Division initially held an in-person hearing, but the Claimant didn't attend. So, it proceeded in his absence.⁶ It dismissed the appeal on July 16, 2024.⁷ And the Claimant appealed that decision to the Appeal Division.

¹ See section 30(1) of the *Employment Insurance Act* (EI Act). This is called a disqualification to benefits. Also, see Commission's reconsideration decision at page GD3-43.

² See General Division decision at ADN1A-1 to ADN1A-9.

³ See Application to the Appeal Division at pages ADN1-1 to ADN1-10.

⁴ See page ADN1-8.

⁵ See section 58(2) of the *Department of Employment and Social Development* (DESD Act) says that leave to appeal is refused if I am satisfied that the appeal has no reasonable chance of success.

⁶ See section 58 of the *Social Security Tribunal Rules of Procedure* (SST Rules).

⁷ See previous General Division file GE-24-1647.

[8] The Appeal Division allowed his appeal because it found that the General Division didn't follow a fair process when it changed the hearing format to an in-person hearing and proceeded in his absence.⁸ To fix the error, it returned the matter to the General Division for reconsideration.

[9] Following that, the General Division held a written hearing and dismissed the Claimant's appeal on December 5, 2024.⁹ The Claimant is now asking for permission to appeal that decision to the Appeal Division.

– **The Claimant submitted new evidence**

[10] As part of his application to the Appeal Division, the Claimant submitted additional information to support his position on the voluntary leave issue.¹⁰ I reviewed the General Division file, and this evidence doesn't appear to be part of the record.

[11] The Appeal Division generally doesn't accept new evidence.¹¹ This is because the Appeal Division isn't the fact finder or rehearing the case. It's a review of the General Division's decision based on the same evidence.¹²

[12] There are some exceptions where new evidence might be allowed.¹³ For example, I can accept new evidence if it provides one of the following: general background information only; or if it highlights findings made without supporting evidence; or brings attention to any procedural defects.

[13] I find that the information submitted by the Claimant (at pages ADN1-9 to ADN1-10) wasn't before the General Division when it made its decision. It is new evidence.

⁸ See previous Appeal Division file AD-24-513. The Appeal Division hearing was held by written hearing, which was the Claimant's request.

⁹ See General Division file GE-24-3336.

¹⁰ See pages ADN1-9 to ADN1-10.

¹¹ See *Tracey v Canada (Attorney General)*, 2015 FC 1300 at paragraphs 29 and 34; *Parchment v Canada (Attorney General)*, 2017 FC 354, at paragraph 23.

¹² See *Gittens v Canada (Attorney General)*, 2019 FCA 256, at paragraph 13.

¹³ See *Sharma v Canada (Attorney General)*, 2018 FCA 48 and *Sibbald v Canada (Attorney General)*, 2022 FCA 157, at paragraphs 37–39.

[14] I am not accepting the Claimant's new evidence because it isn't general background information and doesn't meet any of the other exceptions. This means I can't consider the Claimant's new evidence when making my decision.

[15] I acknowledge that he wants to submit additional information about why he's no longer working, but that is new evidence. It's important to know that an Appeal Division isn't a "redo" based on updated evidence of the hearings before the General Division.¹⁴

Issues

[16] Is there an arguable case that the General Division failed to follow a fair process or was biased?

Analysis

[17] An appeal can only proceed if the Appeal Division gives permission to appeal. I must be satisfied that the appeal has a reasonable chance of success.¹⁵ There are only certain errors that I can consider.¹⁶ There must be some arguable ground that the appeal might succeed.¹⁷

[18] The Claimant argues that the General Division didn't follow a fair process, so that's what I am going to focus on.¹⁸

I am not giving the Claimant permission to appeal

– The Claimant argues that the General Division didn't follow a fair process

[19] The Claimant argues that the General Division didn't follow a fair process. He provided many reasons to support his position.¹⁹

¹⁴ See *Gittens*, at paragraph 13.

¹⁵ See section 58(2) of the DESD Act.

¹⁶ See section 58(1) of the DESD Act.

¹⁷ See *Osaj v Canada (Attorney General)*, 2016 FC 115, at paragraph 12.

¹⁸ See section 58(1)(a) of the DESD Act.

¹⁹ See page ADN1-8.

[20] I've summarized his main arguments as follows:

- he hasn't heard from the Tribunal since October [2023]
- he was contacted by the Tribunal at a friend's phone number to confirm the type of hearing he wanted
- he wrote to the Tribunal to notify that he was in the hospital regularly and wouldn't be available, but would try to respond as soon as possible
- when his mother passed away, he submitted a request for time to adjust to his circumstances and respond²⁰
- he wasn't given any time to submit his written responses and there was no empathy given his circumstances
- he was waiting to reschedule the hearing as he was still grieving
- a decision was made before he could submit his responses to the questions
- the written questions seemed "frivolous, very juvenile and insensitive to the matter" and the tone of the questions was sarcastic
- it was biased.

– **There is no arguable case that the General Division didn't follow a fair process**

[21] Procedural fairness is about the fairness of the process. It includes procedural protections including the right to an unbiased decision maker, the right of a party to be heard and to know the case against them and to be given an opportunity to respond.

²⁰ See page RGD3-1.

[22] The file shows that the Claimant wrote to the General Division on October 16, 2024, and October 20, 2024 stating the following:²¹

October 16, 2024

“Hello, this is to inform you that I am at the X hospital and have been there for the last couple weeks. My mother is dying of cancer. If you need to contact me please do not hesitate at the following email address X.”

October 20, 2024

“Following up on my previous email dated Wednesday, October 16th, 2024. This is in regards to updating my file I would like to add that my Mother has recently deceased and I am trying to arrange for her funeral. I will try to be available and try to get back to you as soon as possible. Thanks for your understanding during this very difficult time.”

[23] In its decision, the General Division wrote that Tribunal staff called the Claimant to confirm the hearing format he preferred because he had identified multiple preferences in his appeal forms.²² The Claimant responded via email confirming that he wanted a written hearing.²³

[24] The *Social Security Tribunal Regulations* requires the Tribunal to respect a person’s chosen form of hearing.²⁴ There are a few exceptions to depart from that choice.²⁵ In this case, the General Division decided to proceed with the Claimant’s choice: a written hearing and the Tribunal emailed him notice of that on November 5, 2024.²⁶

[25] Following that, the General Division wrote a letter to the Claimant on November 6, 2024. It explained that it had some questions for the Claimant and asked

²¹ See page RGD3-1 (October 20, 2024, email). The Claimant’s email from October 16, 2024, was not added to the official appeal file because it was only an update to his email address.

²² See paragraph 10 of the General Division decision.

²³ See pages RGD2-1 to RGD2-2.

²⁴ See section 2(1) of the *Social Security Tribunal Regulations* (SST Regulations).

²⁵ See section 2(3) of the SST Regulations.

²⁶ See pages RGD1-1 to RDG1-2.

for a reply by November 18, 2024.²⁷ However, the Claimant didn't respond to the General Division's letter.

[26] In its decision, the General Division found that its letter was sent to the Claimant's email address on file (the one he provided on October 16, 2024). It noted that Tribunal staff called him on November 26, 2024 (several days after the deadline) to the phone number on file to remind him about it.²⁸ It concluded that he got the letter, didn't respond and so it proceeded with its decision without his additional input.²⁹

[27] There is no arguable case that the General Division failed to follow a fair process or was biased in this case. My reasons follow.

– **The Tribunal uses the contact information it has on file**

[28] The Claimant argues that he hasn't heard from the Tribunal since October [2023].

[29] The Tribunal uses the contact information it has on file when it contacts a party or sends a document to a party.³⁰ This information is usually provided in the notice of appeal forms, but parties can update it by notifying the Tribunal.

[30] In this case, the Claimant told the Tribunal he had an updated email address on October 16, 2024. That is the same email address that the Tribunal used to send him the General Division's notice of written hearing on November 5, 2024, and letter dated November 6, 2024.³¹

²⁷ See pages RGD4-1 to RGD4-5.

²⁸ See paragraph 11 of the General Division decision.

²⁹ See paragraphs 12–13 of the General Division decision.

³⁰ See section 9(1) of the *Social Security Tribunal Rules of Procedure* (SST Rules).

³¹ See pages RGD1-1 to RGD1-2 and RGD4-1 to RGD4-5.

[31] The Claimant also argues that the Tribunal called his friend's phone number. When I look at his initial appeal forms to the General Division, he provided a phone number and there is no indication that it wasn't his own phone number.³²

[32] And when the Tribunal contacted him to confirm whether he wanted a written hearing, they left him a message at the phone number on file. He confirmed receiving that telephone message in one of his emails to the Tribunal.³³

[33] In its decision, the General Division noted that the Tribunal called him at the same phone number he provided on November 26, 2024, and left a message to remind him about the deadline that passed.³⁴ The Tribunal asked him to reply ASAP or call, and failing that, the General Division would proceed with its decision.³⁵

[34] The General Division waited for a response and didn't issue its decision until December 5, 2024. He didn't respond to the emails, or the voicemail message left.

[35] There is no arguable case that the General Division didn't follow a fair process. The Tribunal uses the contact information it has on file.³⁶ The file shows that it used the email address and phone number on file to reach him. The Tribunal can continue the appeal process even if it can't reach a party using the contact information the party gave it, without giving further notice to the party.³⁷

– **The Claimant didn't ask the General Division for a rescheduling or an extension to the deadline**

[36] The Claimant argues that he notified the Tribunal he was in the hospital regularly and that his mother passed away. He says that he submitted a request to the Tribunal for time to adjust to his situation and respond. He also says that he was waiting to

³² See page GD2-3. The Claimant used the same phone number in his Application to the Appeal Division. The only difference is that he checked the box "I don't have a phone" and put it under "other phone number" at page ADN1-3.

³³ See pages RGD2-1 to RGD2-2.

³⁴ See paragraph 11 of the General Division decision.

³⁵ See telephone conversation log dated November 26, 2024.

³⁶ See section 9(1) of the SST Rules.

³⁷ See section 9(2) of the SST Rules.

reschedule the hearing because he was grieving and was dealing with other circumstances.

[37] Based on my review of the file, the Claimant never asked for a rescheduling or an extension to reply to the General Division's letter. The Tribunal allows for the rescheduling of hearings and extensions to deadlines, but you have to ask for one.³⁸ That didn't happen in this case.

[38] The Claimant has mischaracterized his emails (see emails at paragraph 21 above). His emails simply notify the Tribunal that he had limited availability while at the hospital and later that his mother passed. He wrote that he was making funeral arrangements, so he would try to be available and get back as soon as possible.

[39] The General Division wrote to him a few weeks after his mother passed confirming that it would proceed by written hearing on November 5, 2024. That notice said, "The Tribunal member may send you or the other parties a letter asking for more information about this appeal" and "If the Tribunal member doesn't require any additional information, they will decide the appeal based on the information on file."³⁹

[40] Following that, the General Division sent a letter that asked him to reply to its questions by November 18, 2024.⁴⁰ That isn't an unreasonable amount of time, particularly since the Tribunal has to make sure the appeal process is as simple and quick as fairness allows.⁴¹

[41] While grieving the loss of a loved one is an individual process, the General Division couldn't have known how much time he would need to respond. The record shows that it waited a few weeks after his mother's passing before asking him to reply to its questions.

³⁸ See sections 43(1) and 43(2) of the SST Rules.

³⁹ See pages RGD1-1 to RDG1-2.

⁴⁰ See pages RD4-1 to RDG4-5.

⁴¹ See section 8(1) of the SST Rules.

[42] I would also add that the General Division gave consideration to his circumstances and expressed its sympathy for the loss of his mother in its decision.⁴² It didn't ignore his circumstances.

[43] There is no arguable case that the General Division didn't follow a fair process here. The Claimant didn't ask the Tribunal for a rescheduling and didn't ask for an extension to the deadline set out in the letter.

– **The General Division gave the Claimant time to reply**

[44] The Claimant argues that he didn't have enough time to reply to the questions set out in the General Division's letter. He says that it issued its decision before he could reply.

[45] The General Division's notice of written hearing was emailed to him on November 5, 2024. The letter with the questions was emailed to him on November 6, 2024. He was expected to reply by November 18, 2024.

[46] The Claimant had 12 days to reply but didn't reply. As noted above, the Tribunal staff also left him a voicemail message to remind him about the past deadline.

[47] The General Division only issued its decision on December 5, 2024, that was more than 2 weeks after the deadline.

[48] There is no arguable case that the General Division failed to follow a fair process. The Claimant had sufficient time to respond, and the General Division didn't issue its decision until two weeks after the deadline. It was free to proceed and decide the appeal based on the information in the file.

⁴² See paragraph 47 of the General Division decision.

– **There is no indication that the General Division was biased**

[49] The Claimant argues that the tone of the General Division's written questions was frivolous, juvenile, insensitive and sarcastic. He alleges the General Division was biased.

[50] The General Division had to decide whether the Claimant had voluntarily left his job without cause.⁴³ It had to consider whether there were any reasonable alternatives.

[51] When I look at the General Division's written questions, they aren't frivolous, juvenile, insensitive or sarcastic. The written questions are asked in a respectful and neutral manner. Many of the questions are simple and pointed questions, but some of them ask him to provide an explanation of what happened in detail. As well, the questions listed are relevant to the issues it had to decide—the voluntary leave issue.

[52] An allegation of bias is a serious allegation. An allegation for bias can't rest on mere suspicion, pure conjecture, insinuations, or mere impressions.⁴⁴

[53] The legal test for establishing bias is whether an informed person, viewing the matter realistically and practically and having thought the matter through, would conclude that it was more likely than not that the General Division member, whether consciously or unconsciously, wouldn't decide the case in a fair manner.⁴⁵

[54] There is no arguable case that the General Division was biased. An informed person, viewing the matter reasonably and practically and having thought the matter through, wouldn't conclude that it was more likely than not that the General Division was biased.

⁴³ See section 29(c) of the EI Act.

⁴⁴ See *Arthur v Canada (Attorney General)*, 2001 FCA 223.

⁴⁵ See *Committee for Justice and Liberty v National Energy Board*, 1976 CanLII 2 (SCC).

– **There are no other reasons for giving the Claimant permission to appeal**

[55] I reviewed the file, examined the decision under appeal and didn't find any key evidence that the General Division might have ignored or misinterpreted.⁴⁶

Conclusion

[56] Permission to appeal is refused. There is no arguable case that the General Division didn't follow a fair process or was biased.

[57] The appeal has no reasonable chance of success. This means that the Claimant's appeal won't proceed.

Solange Losier
Member, Appeal Division

⁴⁶ See *Karadeolian v Canada (Attorney General)*, 2016 FC 615, which recommends doing such a review.