



Citation: *JX v Canada Employment Insurance Commission*, 2025 SST 61

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

### **Extension of Time and Leave to Appeal Decision**

**Applicant:** J. X.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated August 8, 2024  
(GE-24-1964)

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**Tribunal member:** Solange Losier

**Decision date:** January 28, 2025

**File number:** AD-25-33

## Decision

[1] An extension of time to apply to the Appeal Division is granted. Leave (permission) to appeal is refused. The appeal will not proceed.

## Overview

[2] J. X. is the Claimant in this case. She applied for and received Employment Insurance benefits (benefits).

[3] The Canada Employment Insurance Commission (Commission) retroactively decided that the Claimant wasn't entitled to get benefits from September 20, 2021, because she voluntarily left her job without just cause.<sup>1</sup> This resulted in a notice of debt for an overpayment of benefits.

[4] The General Division dismissed the Claimant's appeal.<sup>2</sup> It found that the Commission had exercised its discretion in a judicial manner when it reconsidered her claim. It decided that she didn't have just cause to leave her job. It found there were reasonable alternatives, so she was disqualified from getting benefits.<sup>3</sup>

[5] The Claimant is now asking for permission to appeal. She argues that the General Division made severable reviewable errors, including that it didn't follow a fair process, that it made an error of jurisdiction, an error of law and an error of fact.<sup>4</sup>

[6] I am denying the Claimant's request for permission to appeal because it has no reasonable chance of success.<sup>5</sup>

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<sup>1</sup> See Commission's initial and reconsideration decisions at pages GD3-46 to GD3-48 and GD3-72.

<sup>2</sup> See General Division decision at pages AD1A-1 to AD1A-11.

<sup>3</sup> See section 30(1) of the *Employment Insurance Act* (EI Act).

<sup>4</sup> See pages AD1C-2 to AD1C-3.

<sup>5</sup> See section 58(2) of the *Department of Employment and Social Development* (DESD Act).

## Preliminary matters

### – I asked the Claimant for more information

[7] When the Claimant submitted her application to the Appeal Division, she didn't use the usual forms and it looked like it was submitted late.<sup>6</sup>

[8] I wrote her a letter asking for more information about the lateness of the application and if late, to provide a reasonable explanation. I also asked her to provide the specific reasons for making the appeal (i.e., this is also called the "grounds of appeal").<sup>7</sup> The Claimant replied to my letter with the information I asked for and I have considered her reasons.<sup>8</sup>

## Issues

[9] The issues in this appeal are:

- a) Was the application to the Appeal Division late?
- b) If so, should I extend the time for filing the application?
- c) Is there an arguable case that the General Division made a reviewable error?

## Analysis

### The application to the Appeal Division was late

[10] The deadline to file an application to the Appeal Division is 30 days after the day on which the General Division decision was communicated to the Claimant in writing.<sup>9</sup>

[11] I have to decide whether the Claimant's application was made late.

[12] The General Division's decision is dated July 30, 2024.

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<sup>6</sup> See Claimant's application at pages AD1-1 to AD1-17; AD1B-1 to AD1B-17.

<sup>7</sup> See Tribunal letter dated January 16, 2025.

<sup>8</sup> See Claimant's reply at pages AD1C-1 to AD1C-3.

<sup>9</sup> See section 57(1)(a) of the DESD Act.

[13] I wrote to the Claimant to ask when she got the General Division decision. She wrote back and said that she got it on August 13, 2024.<sup>10</sup>

[14] I find that the Claimant's application to the Appeal Division was made late. The deadline to file her application was September 13, 2024. The Claimant submitted her application to the Appeal Division a few months later, on January 14, 2025.<sup>11</sup>

### **I am extending the time for filing the application**

[15] When deciding whether to grant an extension of time, I have to consider whether the Claimant has a reasonable explanation for why the application is late.<sup>12</sup>

[16] The Claimant apologized for submitting a late application and explained that the delay was caused because she was depressed about the overpayment debt.<sup>13</sup>

[17] I find the Claimant has provided a reasonable explanation for the delay. I accept that her mental health impacted her ability to file the application on time. I will extend the time to file the application.

### **I am not giving the Claimant permission to appeal because it has no reasonable chance of success**

[18] An appeal can proceed only if the Appeal Division gives permission to appeal.<sup>14</sup> I must be satisfied that the appeal has a reasonable chance of success.<sup>15</sup> This means that there must be some arguable ground upon which the appeal might succeed.<sup>16</sup>

[19] I can only consider certain types of errors. I have to focus on whether the General Division could have made one or more of the relevant errors.<sup>17</sup>

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<sup>10</sup> See page AD1C-2.

<sup>11</sup> See pages AD1-1 to AD1-17.

<sup>12</sup> It says this in section 27(2) of the *Social Security Tribunal Rules of Procedure*.

<sup>13</sup> See page AD1C-2.

<sup>14</sup> See section 56(1) of the DESD Act.

<sup>15</sup> See section 58(2) of the DESD Act.

<sup>16</sup> See *Osaj v Canada (Attorney General)*, 2016 FC 115, at paragraph 12.

<sup>17</sup> See section 58(1) of the DESD Act.

[20] The possible grounds of appeal to the Appeal Division are that the General Division did one of the following:

- proceeded in a way that was unfair
- acted beyond its powers or refused to exercise those powers (i.e., jurisdiction)
- made an error in law
- based its decision on an important error of fact.

[21] The Claimant argues that the General Division made several reviewable errors in its decision. I will address each of them below.

– **There is no arguable case that the General Division failed to follow a fair process**

[22] 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. In other words, if the General Division didn't follow a fair process, then I can intervene.<sup>18</sup>

[23] The Claimant argues that the General Division didn't follow her case fairly. She explains that the "case manager" stood by the side of "Social Development Canada."

[24] I think the Claimant is saying that her case was not decided fairly because the General Division agreed with the other side (the Commission).

[25] The Claimant may not agree with how the case was decided, but it doesn't mean that the process itself was unfair.

[26] The General Division is the trier of fact and it was free to weigh the evidence and find in favour of the Commission. It explained with sufficient reasons why it preferred some of the other evidence and why made the decision it did.<sup>19</sup>

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<sup>18</sup> See section 58(1)(a) of the DESD Act.

<sup>19</sup> See paragraph 46 of the General Division decision.

[27] I've reviewed the General Division decision and the file record, and there is no indication that it failed to follow a fair process. The hearing was held by teleconference and it lasted around 80 minutes. The Claimant attended and she testified at the hearing. She also sent in some documents after the hearing, and the General Division accepted and considered them.<sup>20</sup>

[28] There is no arguable case that the General Division didn't follow a fair process in this case.

– **There is no arguable case that the General Division made an error of jurisdiction or error of law**

[29] An error of jurisdiction means that the General Division didn't decide an issue it had to decide or decided an issue it didn't have the authority to decide.<sup>21</sup>

[30] An error of law happens when the General Division doesn't apply the correct law or uses the correct law but misunderstands what it means or how to apply it.<sup>22</sup>

[31] The Claimant argues that the law allows her to work part-time while receiving benefits.

[32] The Commission decided that Claimant was disqualified from getting benefits because she quit her job without just cause (this is also known as the "reconsideration decision"). That was the decision the Claimant appealed to the General Division.<sup>23</sup>

[33] The General Division's jurisdiction was limited to deciding whether the Claimant voluntarily left her job and if so, if she had just cause to do so.<sup>24</sup>

[34] First, the Claimant is correct when she says that the law allows her to work part-time while collecting benefits. A person is permitted to work while on claim, but they have to declare earnings on their reports and it can affect the amount of benefits they

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<sup>20</sup> See paragraph 10 of the General Division decision.

<sup>21</sup> See section 58(1)(a) of the DESD Act.

<sup>22</sup> See section 58(1)(b) of the DESD Act.

<sup>23</sup> See sections 112 and 113 of the EI Act.

<sup>24</sup> See section 29(c) of the EI Act.

receive. But this case wasn't about the Claimant working and receiving earnings while on claim, it was about whether she quit her job voluntarily and if she had just cause to do that.

[35] Second, the General Division only decided the issues it had the power to decide (the voluntary leave issue and the Commission's exercise of discretion when it reconsidered the claim). That is exactly what the General Division did. And it didn't decide any issues that it had no power to decide.

[36] The law says that just cause for voluntarily leaving an employment or taking a leave from employment exists if the Claimant had no reasonable alternative to leaving or taking the leave, having regard to all the circumstances.<sup>25</sup> This is the legal test.

[37] Third, the General Division correctly stated the legal test. It relied on the applicable law and case law in its decision when it assessed the voluntary leave issue and the Commission's discretion in reconsidering the claim.<sup>26</sup>

[38] There is no arguable case that the General Division made an error of jurisdiction or an error of law.<sup>27</sup>

**– There is no arguable case that the General Division made an error of fact**

[39] An error of fact happens when the General Division has "based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it."<sup>28</sup>

[40] The Claimant argues that the General Division made an error of fact because it didn't address the fact that she was working part-time in 2021. She stopped at that job because she couldn't get full-time hours and felt exhausted while working there.

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<sup>25</sup> See section 29(c) of the EI Act.

<sup>26</sup> See paragraphs 15-16; 19; 30-34 of the General Division decision.

<sup>27</sup> See section 58(1)(a)(b) of the DESD Act.

<sup>28</sup> See section 58(1)(c) of the DESD Act.

[41] The General Division said that the Commission had reconsidered the claim within the 72-month timeline set out in the law.<sup>29</sup> It decided that the Commission had exercised its discretion in a judicial manner when it reconsidered her claim for benefits.<sup>30</sup> It explained that the Commission had considered all relevant factors, didn't consider any irrelevant factors and didn't act in bad faith or in a discriminatory manner when it reconsidered her claim.<sup>31</sup>

[42] The Claimant didn't dispute that she voluntarily quit her part-time job via email on September 20, 2021, because she needed a full-time job.<sup>32</sup> The General Division considered the Claimant's reasons for quitting her job, including those circumstances set out in law: whether there was a significant modification of the terms and conditions respecting wages and whether the working conditions constituted a danger to the Claimant's health.<sup>33</sup>

[43] The General Division explained that the Claimant wasn't offered full-time work because the employment letter says she would have casual part-time work (up to 40 hours). It acknowledged that while the work at the farm was hard and it made the Claimant sore, she didn't have any concerns about her health.<sup>34</sup>

[44] It determined that she had three reasonable alternatives to quitting her job.<sup>35</sup> It found she could have kept working at the farm until she found another job, she could have asked the employer for other work at the farm that was less physical and could have accepted the full-time job that the employer offered her two days after she quit.<sup>36</sup>

[45] The General Division didn't ignore the fact that the job she quit was only part-time.<sup>37</sup> It considered and addressed the issue about her part-time hours, soreness

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<sup>29</sup> See paragraphs 14–18 of the General Division decision.

<sup>30</sup> See paragraphs 26–27 of the General Division decision. The test is set out in *Canada (Attorney General) v Purcell*, 1995 CanLII 3558 (FCA).

<sup>31</sup> See paragraph 25 of the General Division decision.

<sup>32</sup> See paragraphs 7, 37 and 47 of the General Division decision.

<sup>33</sup> See paragraph 25 of the General Division decision and section 29(c)(iv)(vii) of the EI Act.

<sup>34</sup> See paragraphs 47 and 50 of the General Division decision.

<sup>35</sup> See paragraphs 55, 58 of the General Division decision.

<sup>36</sup> See paragraphs 56–58 of the General Division decision.

<sup>37</sup> See paragraph 47 of the General Division decision.



and exhaustion from work. It simply didn't agree with her and found that she had reasonable alternatives to quitting. The law says that a person is disqualified from receiving benefits if the person voluntarily leaves **any** employment without just cause.<sup>38</sup> That includes part-time employment.

[46] The Claimant appears to be re-arguing her case because she disagrees with the outcome. The Appeal Division has a limited role, so I can't intervene in the General Division's conclusion where it applies settled law to the facts.<sup>39</sup>

[47] There is no arguable case that the General Division made an error of fact.<sup>40</sup> Its key findings are consistent with the evidence on the record and it explained why it made the findings it did. It didn't ignore or misunderstand any key evidence.

– **The Claimant can still ask the Commission to write off the overpayment**

[48] Some of the Claimant's arguments to the Appeal Division are about the overpayment debt and she explains that she doesn't have enough money to repay it.<sup>41</sup> The Tribunal can't write off the debt, only the Commission can do that.<sup>42</sup> The Claimant can still ask the Commission to write off the overpayment debt because of undue hardship and call the Debt Management Call Centre at Canada Revenue Agency to discuss a payment plan.<sup>43</sup>

## Conclusion

[49] An extension of time is granted. Permission to appeal is refused. This means that the Claimant's appeal will not proceed. It has no reasonable chance of success.

Solange Losier  
Member, Appeal Division

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<sup>38</sup> See section 30(1) of the EI Act.

<sup>39</sup> See *Garvey v Canada (Attorney General)*, 2018 FCA 118.

<sup>40</sup> See section 58(1)(c) of the DESD Act.

<sup>41</sup> See pages AD1-1 and AD1B-2.

<sup>42</sup> See section 112.1 of the EI Act and *Canada (Attorney General) v Villeneuve*, 2005 FCA 440, at paragraph 16.

<sup>43</sup> See section 56 of the *Employment Insurance Regulations*.