Citation: *MI v Canada Employment Insurance Commission*, 2025 SST 94

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	M. I.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated January 13, 2025 (GE-24-3959)

Tribunal member:	Glenn Betteridge
Decision date:	February 7, 2025
File number:	AD-25-65

Decision

[1] Leave (permission) to appeal is refused. The appeal will not proceed.

Overview

[2] M. I. is the Claimant. She worked as a math and computer science teacher at a private high school from the end of March to the end of June 2024. Then she applied for Employment Insurance (EI) regular benefits.

[3] Section 33(2) of the *Employment Insurance Regulations* (EI Regulations) says a person who is employed in teaching can't get regular benefits during a non-teaching period. Section 33(2) sets out three exceptions. If a person shows they meet an exception, they can get regular benefits.

[4] The courts have said the summer break is a non-teaching period.

[5] The Canada Employment Insurance Commission (Commission) decided the Claimant hadn't proven she was entitled to get benefits during the summer break.

[6] This Tribunal's General Division agreed with the Commission and dismissed the Claimant's appeal. The General Division decided the Claimant hadn't shown a genuine severance or clear break in her employment (paragraphs 20, 31). By the end of June 2024, the school informally told her she would be brought back in September 2024, even if she hadn't yet signed a contract (paragraphs 24, 25, 28, and 31). And the Claimant didn't meet either of the two other exceptions (paragraphs 33 and 42).

[7] To get permission to appeal, the Claimant has to show an arguable case the General Division made an error the law lets me consider. Unfortunately, she hasn't.

Issues

[8] I have to decide five issues.

- Is there an arguable case the hearing was unfair to the Claimant because the General Division insisted on using an interpreter even though the Claimant didn't ask for one?
- Is there an arguable case the hearing or process was unfair to the Claimant because the General Division said it could not consider that the Claimant's colleagues received EI benefits?
- Is there an arguable case the hearing or process was unfair to the Claimant because the General Division didn't properly prepare for the hearing?
- Is there an arguable case the General Division made an important error of fact by ignoring the Claimant's job search evidence or by ignoring or misunderstanding the end date in the Claimant's contract (June 28, 2024)?
- Is there an arguable case the General Division made one of the other errors the law lets me consider?

I am not giving the Claimant permission to appeal

[9] I read the Claimant's application to appeal.[1] I read the General Division decision. I reviewed the documents in the General Division file.[2] And I listened to the recording of the General Division hearing.[3]

[10] For the reasons that follow, I am not giving the Claimant permission to appeal.

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[1] See AD1 and AD1B. Documents AD1 and AD1B contain exactly the same pages—except for the first page covering emails—only in a different order. Both documents are made up of the Claimant's completed application form and two pages of arguments about the ground of appeal/errors. Because the documents contain identical pages, I will only refer to AD1 in this decision.
[2] See GD2, GD3, GD4, and GD5.
[3] The hearing lasted approximately one hour.

The test for getting permission to appeal

[11] I can give the Claimant permission to appeal if she shows an arguable case the General Division made one of the following errors the law lets me consider.[4]

- It used an unfair process or was biased.[5]
- It used its decision-making power improperly, called a jurisdictional error.
- It made an important factual error.
- It made a legal error.

[12] I have to start by considering the errors the Claimant set out in her application.[6] But because the Claimant is self-represented, I should not apply the permission to appeal test mechanistically.[7]

[13] I will start by addressing two arguments or concerns the Claimant wrote in her application.

[14] The Claimant had concerns about the EI process and how the Commission treated her. She believes the Commission was dismissive.[8] Unfortunately for the Claimant, the General Division does not supervise the Commission's conduct in a general sense. The General Division has the power to decide whether the Commission's decisions follow the *Employment Insurance Act* (EI Act) and EI Regulations. And that's what it did in her appeal.

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[4] See section 58(2) of the *Department of Employment and Social Development Act* (DESD Act). The Federal Court has said that an appeal has a reasonable chance of success where there is an arguable case the General Division made an error. See *Brown v Canada (Attorney General)*, 2024 FC 1544 at paragraph 41, citing *Osaj v Canada (Attorney General)*, 2016 FC 115 at paragraph 12.
[5] The bullets are the grounds of appeal in section 58(1) of the DESD Act. I call them errors.
[6] See *Twardowski v Canada (Attorney General)*, 2024 FC 1326 at paragraph 26.
The Federal Court has said this in decisions like *Griffin v Canada (Attorney General)*, 2016 FC 874; *Karadeolian v Canada (Attorney General)*, 2016 FC 615; and J*oseph v Canada (Attorney General)*, 2017 FC 391.
[8] See AD1-5.

[15] If the Claimant isn't satisfied with the way the Commission treated her, she can contact the Office for Client Satisfaction.[9]

[16] She also says it's unjust the Commission told her that contract employees were eligible for EI, but the General Division used a different reason to dismiss her appeal.

[17] That's not accurate. It might be what the Commission agent told her in a call, or what she understood. But the Commission's reconsideration decision letter shows it denied her benefits for a non-teaching period under section 33(2) of the EI Regulations.[10] That was the decision she appealed, and the issue that the General Division identified and decided.

The Claimant hasn't shown an arguable case the General Division process or hearing was unfair to her

[18] The Claimant didn't check the procedural fairness error box on the application form. But she made three arguments that suggest she believes it made this type of error. I will set out the legal test I have to apply, then consider the Claimant's arguments.

[19] The General Division makes an error if it uses an unfair process.[11] These are called procedural fairness or natural justice errors. 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.[12]

[20] The Claimant hasn't argued the General Division member wasn't impartial. And nothing I read or heard suggested an arguable case the member wasn't impartial.

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[9] Go to www.canada.ca/en/employment-social-development/corporate/service-canada/client-satisfaction.html.
[10] See the Commission's reconsideration decision at GD3-30: "You are a permanent teacher with X as of March 25, 2024 and therefore, you are not entitled to Employment Inusrance benefis [sic] as of that date. Furthermore, you are not entitled to Employment Insurance regular benefits for any break periods you might have in the year." See also the Commission's written arguments in GD4.
[11] This is a ground of appeal under section 58(1)(a) of the DESD Act.
[12] See *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69; and *Kuk v Canada (Attorney General)*, 2024 FCA 74.

– The Claimant's first argument

[21] The Claimant argues an interpreter was used for the hearing without her request. She says she was surprised, especially since she communicates fairly well in English.

[22] I agree that the Claimant didn't ask for an interpreter. The General Division was wrong about this (paragraph 6). She checked the box on the appeal form that says she wants her hearing in English.[13] The Tribunal's registry staff might have mistakenly scheduled an interpreter because the Claimant wrote that her dialect was Persian. But she didn't check the box to ask for an interpreter. On behalf of the Tribunal, I apologize for this error.

[23] But there isn't an arguable case using an interpreter made the hearing unfair for the Claimant. The General Division member insisted that everything the member said had to be interpreted.[14] The General Division member explained this was to ensure clear communication and understanding between the Claimant and the General Division member. But the member didn't insist the Claimant use the interpreter to present her case. The Claimant agreed. And spoke in English and Persian.

[24] In her application, the Claimant says this "slowed down the process a bit."[15] I agree. But there isn't an arguable case using the interpreter made the hearing unfair to the Claimant.

[25] One time—near the beginning of the hearing—the Claimant and the interpreter spoke over each other in a way that interrupted the flow of the hearing. This was when the General Division asked the Claimant to affirm, she would tell the truth.[16] Otherwise, the interpretation didn't interfere with the smooth flow of the hearing.

[26] The General Division explained the law and the Commission's position to the Claimant. It asked her questions and gave her time to find documents in her email

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[13] See GD2-4.
[14] Listen to the conversation between the Claimant and the General Division member in the recording of the General Division hearing at 14:40 to 17:42.
[15] See AD1-5.
[16] Listen to the recording of the General Division hearing at 18:30.

account.[17] It gave her a full and fair opportunity to present her case in English and Persian. Finally, it's important to note the Claimant didn't raise any issues about the fairness of the hearing during the hearing.

– The Claimant's second argument

[27] The Claimant argues that the General Division acted unfairly when it told her it could not consider that her colleagues received EI benefits.[18] The Claimant says they were in the exact same situation under the same contract. She argues consistency in decision-making is a fundamental aspect of fairness. She says she is being discriminated against.[19]

[28] This wasn't unfair to the Claimant.

[29] The Claimant is right when she says that consistency in administrative decision-making is an important principle.[20] But she is mixing apples and oranges—meaning, Commission decision-making and Tribunal decision-making.

[30] The General Division is independent of the Commission. It had to decide the Claimant's appeal of the Commission reconsideration decision by applying the settled law to the relevant evidence about her circumstances. And that's what it did.

[31] The General Division doesn't supervise the consistency of the Commission's decision-making. And it doesn't have to follow the Commission's decisions in other people's claims for EI.

[32] Unless multiple appeals are joined together, the General Division only has the power to decide one claimant's appeal of a Commission decision based on the fact and the law. The General Division can consider decided cases from the General Division and Appeal Division. It should decide like cases alike. This means it should normally

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[17] For example, listen to the recording of the General Division hearing at 37:00 to 39:30.
[18] See AD1-3.
[19] See AD1-5.
[20] See *Canada (Minister of Citizenship and Immigration) v Vavil*ov, 2019 SCC 65 at paragraphs 111, 129, and 131.

follow a Tribunal decision about the same legal issue when the law is settled, the relevant facts are the same or very similar, and the decision is well reasoned.

[33] The Claimant didn't support her argument by referring to Tribunal decisions in like cases. But she had the opportunity to do that.

– The Claimant's third argument

[34] The Claimant argues the General Division didn't act with due diligence.[21] She says she was told her hearing was mixed up with another hearing—that's why the member wasn't on the call at the scheduled time. The General Division member asked her a question about benefits. If the member had reviewed her contract and ROE, the member would have known she got no benefits.

[35] It's true the General Division member was late joining the teleconference hearing. But there isn't an arguable case this interfered with the Claimant knowing the case she had to meet. Or an arguable case the General Division deprived her of a full and fair opportunity to present her case.

[36] The member told the Claimant she had reviewed all the documents. And even if she hadn't, she didn't have to do that before the hearing. She had to know the appeal file before she made her decision.

[37] At the hearing the member explained the legal test to the Claimant. She asked relevant questions based on the legal test. She presented the Commission's main arguments to the Claimant so she could respond to them. And she gave the Claimant the last word—a chance to say anything else she hadn't already said.

– No arguable case the General Division hearing or process was unfair

[38] So, the Claimant hasn't shown there is an arguable case the General Division process or hearing was unfair to her.

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[21] See AD1-5.

[39] I have dealt with the first three issues. Next, I will decide the fourth issue.

There isn't an arguable case the General Division ignored job search evidence or her employment contract, or ignored or misunderstood the nature of her job

[40] The Claimant checked the box that says the General Division made an important error of fact. The Claimant makes three arguments, which I will consider below.

[41] 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.[22] In other words, there is some evidence that goes squarely against or doesn't support a factual finding the General Division made to reach its decision.

[42] It is the General Division's job to review and weigh the evidence.[23] At the application to appeal stage, I can't re-weigh the evidence or substitute my view of the facts. The law also says I can presume the General Division reviewed all the evidence—it doesn't have to refer to every piece of evidence.[24]

[43] First, the Claimant argues the General Division overlooked her job search evidence. She says she submitted job search evidence to EI agents over the summer, including applications for long-term positions.[25]

[44] I don't agree with this argument. The General Division could not ignore or overlook evidence that it didn't have.

[45] The Claimant didn't include job search evidence with her appeal form or mention it in her appeal form (GD2). The Commission's didn't include job search evidence in its

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[22] 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 have described this ground of appeal using plain language, based on the words in the Act and the cases that have interpreted the Act.
[23] See *Tracey v Canada (Attorney General)*, 2015 FC 1300 at paragraph 33.
[24] See *Sibbald v Canada (Attorney General)*, 2022 FCA 157 at paragraph 46.
[25] See AD1-4.

reconsideration file (GD3).[26] She told the General Division member she had reviewed GD3. During the hearing she didn't testify about her job search efforts.

[46] So, there isn't an arguable case the General Division ignored evidence of her job search. And I can't consider new evidence—in other words, job search evidence that wasn't before the General Division.

[47] The Claimant argues the General Division made two other important factual errors.

- It based its decision on speculation and casual conversations rather than the formal employment documents.[27] She points to the fact the end date on her contract was June 28, 2024. She says it wasn't reasonable to assume she was guaranteed a job. This argument is about the terminated contract exception under section 33(2)(a).

- It based its decision on speculation rather than objective evidence about the nature of her employment. She says her employment was "demand-based, unstable, and paid hourly."[28] This argument seems to be about the casual or substitute basis exception under section 33(2)(b).

[48] I don't accept the Claimant's arguments.

[49] The General Division had to consider and weigh the evidence that was relevant to the legal tests under sections 33(2)(a) and (b). Its decision shows me that's what it did.

[50] The Federal Court of Appeal (Court) has interpreted the exceptions in section 33(2)(a) and (b) of the EI Regulations. To decide whether a person's teaching contract has terminated, the General Division has to look at more than just the

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[26] There is one mention of looking for work in GD3, at GD3-21: "The claimant was advised of their responsibilities regarding their availability and entitlement to benefits. The claimant agreed to look for work as required."
[27] See AD1-4.
[28] See AD1-4.

beginning and end dates of the person's contact. The Court has identified numerous factors or circumstances the General Division should consider. To decide whether the person worked as a casual or substitute teacher, the General Division has to consider evidence about whether the teaching was regular, continuous, and predetermined.

[51] The General Division's decision shows me it understood the legal test it had to apply under section 33(2)(a) and (b) (paragraphs 13, 14, 16, 18 to 20, 29, 30, 32, and 36). It reviewed the relevant evidence in the documents before it and the Claimant's testimony (paragraphs 21 to 27, and 35, 38, 39). It considered the end date in her contract and section 5.7 of her contract (paragraphs 5, 18, 21, 27, and 28).

[52] There isn't an arguable case the General Division made an error when it gave more weight to section 5.7 than the end date. When considering the exception in section 33(2)(a), the General Division placed the most weight on her testimony to reach the finding she knew in June 2024 her employer planned to have her teach in September 2024 (paragraphs 24, 25, 28, and 31).

[53] Then the General Division carefully weighed the relevant evidence and found that there was no genuine severance or break in the employer-employee relationship (paragraphs 17, 25, 28, 31, and 32). And it found her employment was sufficiently continuous and predetermined (paragraphs 39 and 40). In other words, the General Division didn't speculate. And its decision is supported by the evidence.

[54] So, there isn't an arguable case the General Division made an important factual error.

I didn't find an arguable case the General Division made a jurisdictional error or a legal error

[55] The Claimant is self-represented. So, I considered whether there was an arguable case the General Division made another type of error the law lets me consider.

[56] There isn't an arguable case the General Division made a jurisdictional error. It correctly identified the issue it had to decide (paragraph 12). Then it decided only that issue.

[57] There isn't an arguable case the General Division made a legal error. It used the correct section of the EI Regulations—section 33 (paragraphs 13 and 15). It correctly set out the legal test from the Federal Court of Appeal decisions about that section (paragraphs 13, 14, 16, 18 to 20, 29, 30, 32, and 36). It followed the Court's reasoning in those decisions. And the General Division's reasons are adequate and intelligible given the facts and the law it had to consider when it decided the appeal.[29]

[58] So, I didn't find an arguable case the General Division made another type of error the law lets me consider.

Conclusion

[59] The Claimant hasn't shown an arguable case the General Division made an error. And I didn't find an arguable case.

[60] This means I can't give her permission to appeal the General Division decision.

Glenn Betteridge
Member, Appeal Division

[29] See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211. See also *Sennikova v Canada (Attorney General)*, 2021 FC 982 at paragraphs 62 and 63, where the court says the Tribunal has to grapple with the right questions and its reason for decision must "add up."