



Citation: *JS v Canada Employment Insurance Commission*, 2025 SST 113

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: J. S.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated January 23, 2025
(GE-24-3799)

Tribunal member: Solange Losier

Decision date: February 12, 2025

File number: AD-25-89

Decision

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

Overview

[2] J. S. is the Claimant in this case. He established a claim for Employment Insurance regular benefits (benefits) in July 2019.

[3] A few years later, the Canada Employment Insurance Commission (Commission) found out that the Claimant was out of Canada in 2019 and 2020 while on claim. Canada Border Services Agency (CBSA) told the Commission.¹

[4] The Commission retroactively decided that the Claimant wasn't entitled to get benefits for the two periods he was outside of Canada.² It found that he didn't meet any of the exceptions set out in law.³ This resulted in a notice of debt for the overpayment of benefits.⁴

[5] The General Division concluded the same.⁵ It decided that the Claimant wasn't entitled to get benefits for either period that he was outside of Canada. It also found that the Commission had acted fairly when it reconsidered the claim (this is also called "exercising its discretion in a judicial manner").

[6] The Claimant is now asking for permission to appeal.⁶ He argues that the General Division made several reviewable errors.

[7] I am denying the Claimant's request for permission to appeal because it has no reasonable chance of success.

¹ See pages GD3-50 to GD3-55.

² On reconsideration, the Commission reversed their decisions on two other issues: availability for work and misrepresentation (see pages GD3-102 to GD3-103). However, their decision on the out of Canada issue was maintained.

³ See Commission's reconsideration decision at pages GD3-102 to GD3-103.

⁴ See notice of debt at pages GD3-66 to GD3-68.

⁵ See General Division decision at pages AD1-12 to AD1-21.

⁶ See Application to the Appeal Division at pages AD1-1 to AD1-3 and AD1A-1 to AD1A-3.

Issues

[8] I have focused on the following issues:

- a) Is there an arguable case that the General Division made an error of law?
- b) Is there an arguable case that the General Division made an error of jurisdiction?
- c) Is there an arguable case that the General Division based its decision on an important error of fact?
- d) Is there an arguable case that the General Division failed to follow a fair process?

Analysis

[9] An appeal can proceed only if the Appeal Division gives permission to appeal.⁷ I must be satisfied that the appeal has a reasonable chance of success.⁸ This means that there must be some arguable ground that the appeal might succeed.⁹

[10] 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 (this is called the “grounds of appeal”).¹⁰

[11] 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
- made an error in law
- based its decision on an important error of fact.

⁷ See section 56(1) of the *Department of Employment and Social Development* (DESD Act).

⁸ See section 58(2) of the DESD Act.

⁹ See *Osaj v Canada (Attorney General)*, 2016 FC 115, at paragraph 12.

¹⁰ See section 58(1) of the DESD Act.

[12] For the appeal to proceed to the next steps, the Claimant has to have a reasonable chance of success on one of the above grounds of appeal.

I am not giving the Claimant permission to appeal

[13] The Claimant argues that the General Division made several reviewable errors.¹¹ I've reviewed and considered all of his arguments in making this decision.

– The Claimant was out of Canada for two different periods of time

[14] The *Employment Insurance Act* (EI Act) says that a claimant is **not** entitled to receive benefits for any period during which the claimant is not in Canada “except as may otherwise be prescribed.”¹² There are some exceptions when a Claimant is not disentitled from getting benefits while outside of Canada.¹³

[15] The *Employment Insurance Regulations* (EI Regulations) provides a list of the exceptions available. One of the exceptions is for the purpose of undergoing, at a hospital, medical or similar facility outside Canada, medical treatment that is not readily or immediately available in the claimant's area of residence in Canada, if the hospital, clinic, or facility is accredited to provide the medical treatment by the appropriate governmental authority outside of Canada.¹⁴

[16] The Claimant doesn't dispute that he was out of Canada. The General Division found that he was out of Canada for the following periods:¹⁵

- Period A: October 16, 2019, to November 6, 2019—he travelled to India to pay for a training course in-person
- Period B: February 2, 2020, to March 4, 2020—he travelled to India to get medical treatment that was less expensive than in Canada

¹¹ See pages AD1-1 to AD1-21 and AD1A-1 to AD1A-3.

¹² See section 37(b) of the *Employment Insurance Act* (EI Act).

¹³ See section 55(1) of the *Employment Insurance Regulations* (EI Regulations).

¹⁴ See section 55(1)(a) of the EI Regulations.

¹⁵ See paragraphs 4, 14, 18, 20 of the General Division decision.

- **The Claimant referred to several cases to support his position, but they don't actually mean what he claims they do**

[17] The Claimant argues that the General Division made several errors of law. In his written arguments, he referred to several cases from the Federal Court and Federal Court of Appeal that he says supports his position.

[18] I've reviewed all of the cases, but they don't stand for the things that he says they do and many aren't relevant to this case (except for the case that I've expressly pointed out).

[19] The Claimant argues that the *Elyoumni* decision allows for people to get benefits when they suffer a medical emergency abroad provided that they didn't intentionally mislead the Commission.¹⁶ But that isn't what the case stands for.

[20] The *Elyoumni* decision was an out of Canada case. While on claim, that person left Canada to attend a family member's funeral. The case looked at his availability for work while he was outside of Canada and the exceptions set out in law. It said that availability must be assessed on a case-by-case basis, and that he needed to at least demonstrate that he made arrangements to be reached while out of Canada if he was offered a job.¹⁷

[21] The legal issue in this case is the same, but that person met one of the permitted exceptions (to attend the funeral of an immediate family member).¹⁸ And it doesn't say anything about getting benefits while abroad due to a medical emergency. So, the *Elyoumni* decision doesn't apply here.

[22] The Claimant argues that the *Gibson* decision found that a person who makes an "unintentional mistake" should be given the opportunity for reconsideration. But that isn't what the case stands for.

¹⁶ See *Canada (Attorney General) v Elyoumni*, 2013 FCA 131.

¹⁷ See *Elyoumni*, at paragraph 15.

¹⁸ See section 55(1)(b) of the *EI Regulations*.

[23] The *Gibson* decision dealt with an out of Canada issue, but that person met an exception set out in law because she was abroad for a pre-arranged job opportunity.¹⁹ The Claimant in this case was out of Canada for other reasons, and the decision doesn't talk about mistakes, so it doesn't apply.

[24] The Claimant argues that the *Kaler* decision establishes that good faith errors in reporting shouldn't result in automatic disqualification. But that isn't what the case stands for.

[25] The *Kaler* decision was about antedating an application for benefits, which is a different section in law.²⁰ It found that ignorance of the law, even if coupled with good cause, is not enough to establish good cause.²¹ This case isn't relevant.

[26] The Claimant argues that the *Picard* decision found that a person's unintentional failure to report circumstances shouldn't automatically result in disqualification, particularly when external factors such as illness influenced their actions. But that isn't what the case stands for.

[27] The *Picard* decision dealt with an out of Canada issue, but it looked at the calculation of days (whole days vs. a fraction of a complete day). It found that a person who is outside of Canada for a fraction of a complete day it is not counted as a "period" outside of Canada.²²

[28] The calculation of dates wasn't an issue in dispute. Also, the General Division cited the *Picard* decision in a footnote.²³

[29] The Claimant argues that the *Trinh* decision ruled that persons unable to return to Canada due to medical incapacity shouldn't be automatically disqualified from

¹⁹ See *Canada (Attorney General) v Gibson*, 2012 FCA 166, at paragraphs 4–5.

²⁰ See *Canada (Attorney General) v Kaler*, 2011 FCA 266 and section 10(4) of the EI Act.

²¹ See *Kaler*, at paragraph 4.

²² See *Canada (Attorney General) v Picard*, 2014 FCA 46, at paragraphs 25–26.

²³ See paragraph 12 of the General Division decision.

benefits. He also submits that this decision cautioned against overly harsh penalties for persons who act in good faith. But that isn't what the case stands for.

[30] The *Trinh* decision dealt with a different legal issue (antedate) and section in law.²⁴ It wasn't about medical incapacity or penalties. So, it's not relevant and doesn't apply in this case.

[31] Finally, the Claimant argues that the *Peterson* decision says that one has to consider whether a person's absence was involuntary, particularly due to a sudden medical condition. He also submits that the court ruled that financial and logistical barriers must be considered when determining whether services are truly "available" to a person. But that isn't what the case stands for.

[32] The *Peterson* decision was out of Canada case. It established that the person who is out of Canada has the **onus** of establishing (on a balance of probabilities) that they were outside of Canada for the purpose of undergoing medical treatment in a hospital or similar institution and that such treatment wasn't available in Canada.²⁵

[33] The General Division correctly cited the *Peterson* case in its decision.²⁶ It's relevant because it means that the Claimant is the one who has to prove that he was outside of Canada for the purpose of undergoing medical treatment in a hospital or similar institution and that such treatment wasn't available in Canada.

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

[34] 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.²⁷

[35] The General Division correctly identified the relevant law and applicable legal test in its decision.²⁸ It correctly stated relevant case law in its decision.

²⁴ See *Canada (Attorney General) v Trinh*, 2010 FCA 335 and section 10(4) of the EI Act.

²⁵ See *Peterson v Canada (Attorney General)*, A-370-95.

²⁶ See paragraph 12 of the General Division decision.

²⁷ See section 58(1)(b) of the DESD Act.

²⁸ See paragraphs 10–11 of the General Division decision.

[36] As noted above, the majority of the case law argued by the Claimant was inaccurate and not relevant.

[37] There is no arguable case that the General Division made an error of law.²⁹ The General Division has to follow the *Employment Insurance Act*, the *Employment Insurance Regulations* and **relevant** decisions from the Federal Court and Federal Court of Appeal. And that is exactly what it did.

[38] The General Division and Appeal Division can't change the law in order to create new exceptions to accommodate the Claimant's circumstances. And a disagreement with the law isn't a reviewable error.

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

[39] 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.³⁰

[40] The file shows that there was a notice of debt for the overpayment of benefits for the two periods the Claimant was out of Canada.³¹

[41] The Claimant argues that the Tribunal should exercise its discretionary power to grant relief on compassionate grounds and because of financial hardship. He explains that he's prepared to share his financial information to show that he has a deficit each month.

[42] The law doesn't give the General Division or the Appeal Division any authority or discretion to grant relief for compassionate or financial reasons. The General Division has to follow the law and isn't permitted to rewrite it, regardless of how compelling the circumstances might be.

²⁹ See section 58(1)(b) of the DESD Act.

³⁰ See section 58(1)(a) of the DESD Act.

³¹ See notice of debt at pages GD3-66 to GD3-68.

[43] The General Division has no authority to write off the overpayment debt.³² Only the Commission has the power to do that.³³ But the Claimant can **still** ask the Commission to write off the overpayment based on hardship.

[44] The **only** issue before the General Division was the out of Canada issue. The other issues referenced by the Claimant (availability for work and misrepresentation) were reversed by the Commission on reconsideration and not under appeal.³⁴

[45] There is no arguable case that the General Division made an error of jurisdiction. It only decided the issues it had the power to decide (the out of Canada issue) and didn't decide any issues that it had no power to decide.

– **There is no arguable case that the General Division based its decision on an important error of fact**

[46] 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.”³⁵

[47] The *Walls* decision says that an error of fact involves considering some of the following questions:³⁶

- Does the evidence squarely contradict one of the General Division's key findings?
- Is there no evidence that could rationally support one of the General Division's key findings?
- Did the General Division overlook critical evidence that contradicts one of its key findings?

³² See section 56 of the *EI Regulations*.

³³ See section 112.1 of the *EI Act* and *Canada (Attorney General) v Villeneuve*, 2005 FCA 440 at paragraph 16.

³⁴ See page AD1A-1.

³⁵ See section 58(1)(c) of the DESD Act.

³⁶ This is a summary of the Federal Court of Appeal's decision in *Walls v Canada (Attorney General)*, 2022 FCA 47, at paragraph 41.

[48] The Claimant argues that the General Division failed to fully consider the medical evidence and that his circumstances were beyond his control leading to his extended stay out of Canada.

[49] The General Division's decision shows that it considered his reasons for staying longer than expected in India and the medical issues he was experiencing. It didn't ignore or overlook this evidence; it simply found that he didn't meet any of the exceptions that would allow him to be paid benefits while out of Canada.

[50] The General Division decided that leaving Canada to go to India to pay for a training course wasn't an exception that the law allows.³⁷ Because of that, he was disentitled to benefits for the period October 16, 2019, to November 6, 2019 (Period A).

[51] The General Division also decided that his second trip to India did not meet any of the exceptions. It found that he made a personal decision and sought medical treatment that was **readily available in Canada**.³⁸ He was disentitled to benefits for the period February 2, 2020, to March 4, 2020 (Period B). The Claimant agreed that the medical treatment was available in Canada, but he said it was more expensive.³⁹

[52] The General Division concluded that the Claimant wasn't entitled to get benefits for Period A and Period B because he didn't meet any of the exceptions in law.⁴⁰

[53] The General Division also considered whether the Commission had the authority to go back and reconsider the claim.⁴¹ It said that the Commission had the authority to go back and reconsider his claim within the 72-month period because false statements were made.⁴² And it found that the Commission had reconsidered within that period.⁴³

³⁷ See paragraphs 28–29 of the General Division decision.

³⁸ See paragraphs 31–32, 38 of the General Division decision.

³⁹ See paragraph 30 of the General Division decision.

⁴⁰ See paragraph 34 of the General Division decision.

⁴¹ See paragraphs 39 to 47 of the General Division decision.

⁴² See section 52(5) of the EI Act.

⁴³ See paragraph 40 of the General Division decision.

[54] It explained that he didn't declare on his claim reports that he had left Canada on two occasions in 2019 and in 2020 while he was receiving benefits.⁴⁴ It noted that the claim report questions were simple questions: "Were you outside of Canada between Monday and Friday during the period of this report?" but that his answers to those questions were false. The General Division concluded that the Commission had exercised its discretion in a judicial manner when it reconsidered the claim.⁴⁵

[55] The Claimant appears to be re-arguing his case. He's restating the reasons he was out of Canada and wants an exception to be made for his circumstances. But an Appeal Division hearing isn't an opportunity for the parties to re-argue their case in order to get a different outcome. The Appeal Division has a limited mandate. So, I can't reweigh the evidence in order to come to a different conclusion that is more favourable for the Claimant.⁴⁶

[56] There is no arguable case that the General Division based its decision on an important error of fact.⁴⁷ It didn't overlook his medical reasons. Its key findings are consistent with the evidence before it. I am satisfied that the General Division didn't misinterpret or fail to consider any relevant evidence.⁴⁸

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

[57] Procedural fairness is about the fairness of the process. It includes procedural protections including the right to an impartial 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.

[58] The Claimant hasn't really pointed out how the General Division failed to follow a fair process. He checked off the box in his application to the Appeal Division, but his

⁴⁴ See paragraph 39 of the General Division decision.

⁴⁵ See paragraph 44 of the General Division decision.

⁴⁶ See *Garvey v Canada (Attorney General)*, 2018 FCA 118, at paragraph 11.

⁴⁷ See section 58(1)(c) of the DESD Act.

⁴⁸ The Federal Court recommends such a review in *Karadeolian v Canada (Attorney General)*, 2016 FC 165, at paragraph 10.

written arguments don't explain why or how the General Division failed to follow a fair process.⁴⁹

[59] The Claimant does refer to the *Kaler* decision and argues that it says delays in enforcement and investigations can “violate the principles of natural justice” particularly when they prevent someone from adequately defending their case.

[60] As I've noted above (in paragraph 27), that isn't what the *Kaler* case stands for. That case dealt with antedating an application for benefits and doesn't apply in this case.

[61] I'm not sure, but I think the Claimant might be arguing that the Commission's delay in reconsidering his claim may have affected his ability to defend himself.

[62] I listened to the audio recording from the General Division hearing. There was no indication that time passage affected his ability to recall the events. The audio recording shows that the Claimant testified in great detail about what happened that led him to travelling in 2019 and 2020. The teleconference hearing lasted around 60 minutes and the General Division asked him relevant questions throughout.

[63] I've reviewed the file, the decision and audio recording. There is no arguable case that the General Division failed to follow a fair process in this case.⁵⁰

Conclusion

[64] 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

⁴⁹ See page AD1-5.

⁵⁰ See section 58(1)(c) of the DESD Act.