



Citation: *CB v Canada Employment Insurance Commission*, 2024 SST 1259

Social Security Tribunal of Canada Appeal Division

Decision

Appellant:	C. B.
Representative:	J. E.
Respondent:	Canada Employment Insurance Commission
Representative:	Jessica Earles

Decision under appeal:	General Division decision dated June 21, 2024 (GE-24-907)
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Tribunal member:	Glenn Betteridge
Type of hearing:	Teleconference
Hearing date:	October 9, 2024
Hearing participants:	Appellant's representative Respondent's representative
Decision date:	October 18, 2024
CORRIGENDUM DATE	October 21, 2024
File number:	AD-24-500

Decision

[1] I am allowing C. B.'s appeal, in part.

[2] The General Division made an error when it didn't decide whether she was available for work when she was a full-time student (September 6, 2021 to June 23, 2022). I am sending her case back to the General Division for a different member to decide that issue.

Overview

[3] C. B. is the Claimant. She left her job and went back to high school full time in September 2021. She applied for Employment Insurance (EI) regular benefits.

[4] The Canada Employment Insurance Commission (Commission) approved her claim. It paid her benefits starting September 6, 2021. She went back to work briefly. But she left a second time on September 26, 2021.

[5] Later, the Commission reviewed her claim. It made four decisions. She was disqualified from getting benefits starting September 26, 2021, because she voluntarily left her job without just cause. She was disentitled from getting benefits from September 6, 2021 to June 23, 2022, because she wasn't available for work while in school full time. (I will call this the student availability issue.) She was disentitled from getting benefits from July 6 to July 12, 2022, because she wasn't available for work while on vacation. (I will call this the vacation availability issue.) The Commission gave her a warning letter (a type of penalty) for knowingly giving it false information.

[6] The Commission calculated the benefits she had to pay back (an overpayment). And it sent her a notice of debt.

[7] The Commission upheld its decisions when she asked it to reconsider. So, she appealed to this Tribunal's General Division.

[8] The General Division dismissed her appeal. It agreed with the Commission about the disqualification for voluntarily leaving. It decided the Commission acted properly when it imposed the penalty for knowingly making false statements. It said that it didn't have to decide the school availability issue.

[9] At the hearing, the parties agreed the General Division made two errors. The disagreed on how I should fix the General Division's errors. And the Claimant argued the General Division made two other errors.

Issues

[10] I have to decide three issues.

- Should I accept the parties' agreement that the General Division didn't decide two issues it should have decided: the student availability issue and the ~~student~~ **[vacation]** availability issue?
- Did the General Division make any other errors?
- How should I remedy (fix) the General Division's errors?

[11] To decide these issues, I reviewed the Claimant's application and the other documents she sent to the Appeal Division.¹ I read the General Division. I reviewed the documents from the General Division file.² I reviewed the Commission's written arguments.³ And I considered what the parties said at the Appeal Division hearing.

Analysis

[12] The Claimant has to show the General Division made an error the law lets me consider—it used an unfair process, or it made a legal error, a jurisdictional error, or an important factual error.⁴

¹ See AD1, AD6, and AD8.

² See GD3, GD3, GD4, GD5, and GD6.

³ See AD4.

⁴ Section 58(1) of the *Department of Employment and Social Development Act* (DESD Act) sets out grounds of appeal. I use plain language and call these errors.

[13] The parties agree the General Division didn't decide two issues it should have decided. In other words, they agree the General Division made two jurisdictional errors. The Claimant also argues the General Division used an unfair process and made an important factual error.

[14] If I find the General Division made an error, the law gives me the power to remedy (fix) it.⁵

[15] Next, I will consider whether the General Division made any errors. If I find it did, then I will decide how to fix the error(s).

I accept the parties' agreement on one jurisdictional error—it had to decide the student availability issue, but didn't

[16] The General Division makes an error if it doesn't decide an issue it has to decide.⁶ In law, this is called a jurisdictional error.

[17] The *Employment Insurance Act* (EI Act) says to get regular benefits a person has to be available for work.⁷ This means they have to show they are actively looking for a suitable job on an ongoing basis. They are willing to take a suitable job if they get an offer. They can't find a suitable job. And they haven't set personal conditions that unduly limit their chances of returning to work.

[18] Students who choose to go to school full time are presumed to be unavailable for work.⁸ The General Division has to do a contextual analysis to decide whether the person has overcome this presumption.⁹

[19] The General Division gets its power to decide an issue from the Commission's reconsideration decision **combined with** the Claimant's appeal of that decision. The

⁵ See section 59(1) of the DESD Act.

⁶ See section 58(1)(a) of the DESD Act.

⁷ See sections 19(1)(a) and 50(8) of the *Employment Insurance Act* (EI Act).

⁸ Unless the training or course of study is approved by the Commission or an organization the Commission has an agreement with. See section 25(1) of the EI Act.

⁹ See *Page v Canada (Attorney General)*, 2023 FCA 169 at paragraphs 68 to 70.

Commission upheld four decisions on reconsideration. The Claimant challenged three of those decisions on her appeal form:

- Disqualified from getting benefits starting September 26, 2021 because she voluntarily left her job without just cause.
- Disentitled from getting benefits from September 6, 2021 to June 23, 2022 because she wasn't available for work while in school full time. I will call this the student availability issue.
- The Commission decided she knowingly giving it false information, so it imposed a penalty (a warning letter).

[20] And at the hearing, she also challenged the Commission's decision to disentitle her for not being available for work while on vacation (July 6 to 12, 2022).

[21] This means the General Division had the legal power to decide all four issues—and it should have decided each because the Claimant appealed each.

– **The General Division didn't decide the student availability issue, but it should have**

[22] The General Division said it didn't have to decide the Claimant's appeal of the student availability issue. It reasoned:

[3] This issue is irrelevant because the Tribunal has already found that the Appellant was disqualified from receiving EI benefits because she quit her job on September 26, 2021. The Appellant didn't requalify for benefits at any time she was attending High School in 2021 – 2022, so she remained disqualified.¹⁰

[23] This reasoning presumes that the disqualification period completely covers the disentitlement period under the student availability issue. But the disentitlement the Commission put on her claim started on September 6, 2021—20 days before the disqualification. It started on September 26, 2021.

¹⁰ See also the General Division decision at paragraphs 50 through 53.

[24] Because the Claimant wasn't disqualified for those 20 days, the General Division had to decide whether she was entitled to get benefits for those days. The Commission decided she wasn't entitled to benefits because she wasn't available for work while in school full time. She appealed that decision to the General Division.

[25] This means the General Division had to decide the student availability issue to decide the issues in her appeal. But it didn't. So, the General Division made a jurisdictional error.

– **The General Division decided the vacation availability issue, and didn't make an error**

[26] I don't agree with the Commission's argument the General Division made a jurisdictional error by not deciding the vacation availability issue.¹¹ The General Division's reasons show me it decided that issue.

[27] The General Division considered the evidence and the law and decided the vacation availability issue in paragraphs 57 to 62. It found it was more likely than not the Claimant would not have been able to return home from PEI within 24 hours to accept a suitable job (paragraph 61). And it found she wasn't ready, willing, and capable of working when she was on PEI for a week (paragraph 62).

[28] The General Division analyzed this issue under the "Penalty" section of its decision. That doesn't erase its conclusion the Claimant didn't show she was available for work while on vacation. And it didn't make an error when it decided this issue.

[29] This means I don't accept the parties' agreement that the General Division made this jurisdictional error.

¹¹ See AD3-4 and AD3-6.

The General Division used a fair process and considered the relevant evidence

[30] The Claimant checked the “procedural fairness” error on her application to the Appeal Division.¹² Then she argues she doesn’t agree with the General Division decision. She argues all her documents were true. (I believe she is arguing she didn’t give false information to the Commission.)

[31] At the Appeal Division hearing, the Claimant’s Representative said the General Division process wasn’t fair.¹³ She argued the General Division didn’t act fairly when it disqualified the Claimant. When I asked her, she could not identify a specific part of the process (including the hearing) that was unfair.

[32] The Claimant hasn’t shown the General Division process or procedure was unfair to her. Simply disagreeing with the General Division’s findings, or the outcome of the appeal, isn’t the type of error I can consider.¹⁴ I can’t judge the General Division decision based on fairness as a general principle.¹⁵

[33] The Claimant argues the General Division didn’t look at her reasons for quitting—to get a job closer to home in the evenings because her job was too far to travel.

[34] I reviewed the evidence before the General Division and read its decision. It summarized the Claimant’s evidence and argument about her reasons for quitting at paragraphs 45 to 47. It notes that she said her 45-minute commute was too long.

[35] So, the General Division didn’t ignore or misunderstand her evidence. It weighed the evidence and made a finding of fact. This is what it had to do. I can’t reweigh the evidence to make a different finding.

¹² See AD1-3.

¹³ Listen to the recording of the Appeal Division hearing starting at 48:30.

¹⁴ See *Griffin v Canada (Attorney General)*, 2016 FC 874 at paragraph 20.

¹⁵ See *Al-Harbawi v Canada (Attorney General)*, 2024 FCA 148 at paragraph 11.

[36] The Claimant hasn't shown the General Division ignored or misunderstood any evidence it used to make a finding of fact and reach its decision on the issues it decided.

[37] This means the Claimant hasn't shown the General Division made an important factual error.

Fixing the error: I am sending the case back to the General Division to decide the student availability issue

[38] The General Division made one error. It had to decide the student availability issue—but it didn't.

[39] When I find an error, the law lets me send the case back to the General Division.¹⁶ It also lets me make the decision the General Division should have made.

[40] The parties don't agree on how I should fix the error. The Claimant's Representative says she wants me to make the decision, so this gets fixed for the Claimant. The Commission argues the evidence about the student availability issue is incomplete.¹⁷ It says there isn't enough evidence about the Claimant's willingness to look for and accept other employment or her job search efforts while in school. So, it says I should send this issue back to the General Division to reconsider.

[41] I agree with the Commission. So, I am sending the Claimant's case back to the General Division for a different member can decide one issue: whether the Claimant was available for work while she was a full-time student (September 6, 2021 to June 23, 2022).

¹⁶ See section 59(1) of the DESD Act.

¹⁷ See AD3-6 and AD3-8.

Conclusion

[42] I am allowing the Claimant's appeal on the student availability issue. I am sending the case back to the General Division for a different member to decide only that issue.

[43] The General Division didn't make errors when it decided the three other issues in the Claimant's appeal. These issues were the disqualification for voluntarily leaving her job without just cause, the Commission's decision to impose a penalty, and the disentitlement when she was on vacation in PEI. So, the General Division's decision on each of these issues stands unchanged.

Glenn Betteridge
Member, Appeal Division