



Citation: *AG v Canada Employment Insurance Commission*, 2025 SST 240

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: A. G.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated February 28, 2025
(GE-25-365)

Tribunal member: Glenn Betteridge

Decision date: March 18, 2025

File number: AD-25-186

Decision

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

Overview

[2] A. G. is the Claimant. She has asked for permission to appeal a General Division decision.

[3] The General Division refused to extend the 30-day deadline for her reconsideration request. It decided she didn't meet the test in the *Reconsideration Request Regulations*. She didn't show a reasonable explanation of why she needed an extension.

[4] I can give her permission to appeal the General Division decision if her appeal has a reasonable chance of success.

[5] Arguably the General Division made a legal error. But even if the General Division made that error, her appeal doesn't have a reasonable chance of success.

Issues

[6] I have to decide three issues.

- Do the Claimant's reasons for appeal show an arguable case the General Division made an error?
- Did the General Division make a legal error when it didn't use the second part of the legal test for an extension of time?
- If so, does this legal error give her appeal a reasonable chance of success?

I am not giving the Claimant permission to appeal

[7] 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 Then I made my decision.

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

The permission to appeal test screens out appeals that don't have a reasonable chance of success³

[9] I can give the Claimant permission to appeal if her appeal has a reasonable chance of success.⁴ This means she has to show an **arguable ground of appeal** upon which her appeal **might succeed**.⁵

[10] I can consider four grounds of appeal, which I call **errors**.⁶ The General Division

- used an unfair process or wasn't impartial (a procedural fairness error)
- didn't use its decision-making power properly (a jurisdictional error)
- made a legal error
- made an important factual error

[11] The Claimant's reasons for appeal set out the key issues and central arguments I have to consider.⁷ Because the Claimant is representing herself, I will also look beyond her arguments when I apply the permission to appeal test.⁸

¹ See AD1.

² See GD2, GD3, GD4, and GD4.

³ See *Paradis v Canada (Attorney General)*, 2016 FC 1282 at paragraph 32.

⁴ See section 58(2) of the *Department of Employment and Social Development Act* (DESD Act).

⁵ See *Osaj v Canada (Attorney General)*, 2016 FC 115.

⁶ See section 58(1) of the DESD Act.

⁷ See *Hazaparu v Canada (Attorney General)*, 2024 FC 928 at paragraph 13.

⁸ The Federal Court has said the Appeal Division should not apply the leave to appeal test mechanistically and should review the General Division record. See for example *Griffin v Canada (Attorney General)*, 2016 FC 874; *Karadeolian v Canada (Attorney General)*, 2016 FC 615; and *Joseph v Canada (Attorney General)*, 2017 FC 391.

The Claimant is challenging the Commission's misconduct decision, instead of the General Division decision

[12] The Claimant's reasons for appeal don't show an arguable case the General Division made an error.

[13] The Claimant checked the box that says the General Division made a jurisdictional error. But she doesn't explain or give details about that error. When a claimant doesn't explain or give details about an alleged error, that ground of appeal has no reasonable chance of success.⁹

[14] The Claimant's reasons for appeal challenge the Commission's misconduct and overpayment decisions.¹⁰ But the General Division didn't look at the misconduct or overpayment issues. It had no power to consider those issues. In other words, her reasons don't say what's wrong with the General Division decision.

[15] The Claimant hasn't shown an arguable case the General Division made an error. So her reasons don't show her appeal has a reasonable chance of success.

[16] Next I will consider whether the Claimant's appeal has a reasonable chance of success, based on my review of the General Division decision and file.

An arguable case the General Division made a legal error when it didn't use the second part of the legal test

[17] The General Division makes a legal error when it misinterprets the *Employment Insurance Act* (EI Act) or uses an incorrect legal test.

[18] The General Division decided the Commission didn't act judicially when it refused to extend the time for the Claimant's reconsider request. This meant the General Division had to decide whether to extend the time.

[19] The General Division decided the Claimant's reconsider request was late, but less than one year late. So the General Division had to use the two-part legal test from

⁹ See *Twardowski v Canada (Attorney General)*, 2024 FC 1326 at paragraph 59.

¹⁰ See section 30 of the *Employment Insurance Act*.

section 1(1) of the *Reconsideration Request Regulations*. The Claimant had to **show two things** to get an extension of time:

- a reasonable explanation for being late; **and**
- a continuing intention to ask for a reconsideration.

[20] The General Division correctly stated this test (paragraphs 17 and 66).

[21] But there is an arguable case the General Division made a legal error when it decided the appeal using only the first part of the test. The General Division explained it didn't have to use the second part because the Claimant failed the legal test when she didn't meet the first part (paragraph 83).

[22] The General Division's reasoning is logically correct, but there's an arguable case it's legally wrong. Three reasons make me think the General Division had to use both parts of the legal test. Each reason is about the General Division's role and powers in the EI appeal scheme.

- Jurisdiction and discretion: Parliament made a two-part test in section 1(1), so the General Division had to follow it. The General Division process is a new hearing about the legal issue(s) the Commission decided using the EI Act and regulations. Unlike a court, the General Division can't refuse to answer all or part of a question that is properly before it.
- Fact-finding: The General Division is the primary fact finder in the Employment Insurance appeals scheme. Practically and institutionally, the General Division should make every finding of fact the law allows or requires. Then if a party appeals the General Division decision, the Appeal Division is in a better position to decide applications and appeals simply, quickly, and fairly.

- Power to fix errors: The General Division can fix a Commission error by making the decision the Commission should have made.¹¹ The power to extend the time for a reconsideration request is discretionary. When the General Division steps into the shoes of the Commission and uses that power, it should act judicially. Acting judicially means considering all relevant factors—including factors that come from each part of the legal test for extending time.

[23] Appeal Division decisions support my finding there's an arguable case the General Division made a legal error.¹² These Appeal Division decisions say the General Division should use both parts of the legal test under section 1(1) when it steps into the shoes of the Commission. The General Division isn't bound to follow the Appeal Division. But the tribunal should promote consistent decision-making, by treating like cases alike.

[24] So there's an arguable case the General Division made a legal error when it skipped the second part of the legal test.

Even if the General Division made that legal error, it doesn't change the outcome in the Claimant's appeal

[25] Even if the General Division made this legal error, the Claimant's appeal doesn't have a reasonable chance of success. Because fixing this error can't change the outcome in her appeal.

[26] The General Division's found the Claimant didn't have a reasonable explanation for needing an extension of time. The General Division considered and weighed the relevant evidence, without ignoring or misunderstanding evidence. It's finding is

¹¹ See section 54(1) of the DESD Act.

¹² See for example, *CS v Canada Employment Insurance Commission*, 2024 SST 708; *DA v Canada Employment Insurance Commission*, 2023 SST 1788; *KN v Canada Employment Insurance Commission*, 2024 SST 1301; and *NR v Canada Employment Insurance Commission*, 2024 SST 199. But see this decision where the Appeal Division found no arguable case of an error when the General Division dismissed the appeal without applying the whole test: *SL v Canada Employment Insurance Commission*, 2024 SST 187.

supported by the evidence. And it means she doesn't meet the legal test to get an extension of time.

[27] To summarize, the permission to appeal test is practical and based on reasonableness. I can only give the Claimant permission to appeal if her appeal has a reasonable chance of success. Unfortunately for her, even if the General Division got the legal test wrong, this would not change the outcome in her appeal.

[28] I reviewed the General Division decision and file and I didn't find an arguable case the General Division made any other error the law lets me consider.

Conclusion

[29] The Claimant hasn't shown an arguable case the General Division made an error. I found an arguable case the General Division made a legal error. But even if it did make that error, fixing the error would not change the outcome in her appeal.

[30] This tells me her appeal doesn't have a reasonable chance of success. So I can't give her permission to appeal the General Division decision.

Glenn Betteridge
Member, Appeal Division