



Citation: *MK v Canada Employment Insurance Commission*, 2025 SST 243

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

# **Leave to Appeal Decision**

**Applicant:** M. K.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated February 24, 2025  
(GE-25-262)

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**Tribunal member:** Pierre Lafontaine

**Decision date:** March 19, 2025

**File number:** AD-25-158

## Decision

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

## Overview

[2] The Respondent (Commission) decided that the Applicant (Claimant) was disentitled from receiving Employment Insurance (EI) regular benefits from July 20 to August 16, 2022, because she was outside Canada. It also decided that the Claimant was disentitled from receiving EI benefits because she wasn't available for work since February 20, 2022. The Commission further decided that the Claimant made false or misleading statements by not declaring she was outside Canada. So, it issued a warning.

[3] Upon reconsideration, the Commission maintained its initial decisions. The Claimant appealed the reconsideration decisions to the General Division of the Tribunal.

[4] The General Division found that the Claimant was outside Canada from July 20 to August 16, 2022, while she was getting EI benefits. It concluded that the Claimant met the exception that allows for an absence from Canada of up to seven days to attend a job interview. The exemption applied from August 4 to 10, 2022.

[5] The General Division found that the Claimant made false statements. It found that she made them knowingly. It concluded that the Commission acted judicially when it issued a warning.

[6] The General Division concluded that the Claimant did not show that from February 15, 2022, she was available for work within the meaning of the law.

[7] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. She submits that she was not aware EI benefits were not payable when outside of Canada. She did not do anything intentionally. The Claimant submits that she was fully available for work from February 15, 2022, and that she can also show the job descriptions where she applied that demonstrate she can work without no

time restrictions. She submits that she applied for jobs which match her skills and experience.

[8] I must decide whether there is some reviewable error of the General Division upon which the appeal might succeed.

[9] I am refusing leave to appeal because the Claimant's appeal has no reasonable chance of success.

## Issue

[10] Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

## Analysis

[11] The law specifies the only grounds of appeal of a General Division decision.<sup>1</sup> These reviewable errors are that:

1. The General Division hearing process was not fair in some way.
2. The General Division did not decide an issue that it should have decided. Or, it decided something it did not have the power to decide.
3. The General Division based its decision on an important error of fact.
4. The General Division made an error of law when making its decision.

[12] An application for leave to appeal is a preliminary step to a hearing on the merits. It is an initial hurdle for the Claimant to meet, but it is lower than the one that must be met on the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove her case but must establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, that there is arguably some reviewable error upon which the appeal might succeed.

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<sup>1</sup> Section 58(1) of the *Department of Employment and Social Development Act*.

[13] Therefore, before I can grant leave, I need to be satisfied that the reasons for appeal fall within any of the above-mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success.

## **Preliminary observations**

[14] It is well established that to decide the present application for leave to appeal, I must only consider the evidence that was presented to the General Division. An appeal to the Appeal Division is not an opportunity to present new evidence. The powers of the Appeal Division are limited by law.<sup>2</sup>

### **Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?**

[15] The Claimant submits that she was not aware EI benefits were not payable when outside of Canada. She did not do anything intentionally. The Claimant submits that she was fully available for work from February 15, 2022, and that she can also show the job descriptions where she applied that demonstrate she can work without no time restrictions. She submits that she applied for jobs which match her skills and experience.

## **Outside of Canada**

[16] The law stipulates without ambiguity that a claimant is not entitled to receive EI benefits for any period during which the claimant is not in Canada<sup>3</sup>, unless the claimant falls under one of the exceptions set out in the regulations.<sup>4</sup>

[17] There is no dispute that the Claimant was outside Canada from July 20 to August 16, 2022.

[18] The General Division found that the Claimant met the exception that allows for an absence from Canada of up to seven days to attend a job interview. Her interview was

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<sup>2</sup> *Sibbald v Canada (Attorney General)*, 2022 CAF 157.

<sup>3</sup> Section 37(b) of the *Employment Insurance Act*.

<sup>4</sup> Section 55 of the *Employment Insurance Regulations*.

scheduled for August 5, 2022. The General Division applied the exemption from August 4 to 10, 2022.

[19] Therefore, the General Division correctly concluded that the Claimant is not entitled to EI benefits for the rest of the period she was not in Canada, from July 20 to August 3, 2022, and from August 11 to 16, 2022, because no other exceptions applied.

[20] This ground of appeal has no reasonable chance of success.

## **Penalty**

[21] The General Division found that the Claimant made false statements. It found that she made them knowingly. It concluded that the Commission acted judicially when it issued a warning.

[22] Parliament's only requirement for imposing a penalty is that of knowingly—that is, with full knowledge of the facts—making a false or misleading representation. The absence of the intent to defraud is therefore of no relevance.<sup>5</sup>

[23] After considering the evidence and the Claimant's testimony, the General Division found that the Claimant had knowingly made false or misleading statements by stating in her reports that she was not outside of Canada.

[24] The burden of proof shifts as soon as a claimant wrongly answers a very simple question on a report card. In this case, the question the Claimant had to answer was very simple: "*Where you outside Canada between Monday and Friday during the period of this report?*"<sup>6</sup>

[25] Therefore, it was up to the Claimant to explain why incorrect answers were given. She had to prove that she did not know that her answers were incorrect.

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<sup>5</sup> *Canada (Attorney General) v Bellil*, 2017 FCA 104.

<sup>6</sup> *Canada (Attorney General) v Gates*, 1995 CanLII 3601 (FCA); *Canada (Attorney General) v Purcell*, 1995 CanLII 3558 (FCA).

[26] As is evident from the General Division decision, the General Division clearly did not give much weight or credibility to the Claimant's account that she completed her reports on her mobile phone and believed she had answered "yes" to the question. The reports for the period of July 10, 2022, to August 20, 2022, indicate that she answered "no" on three occasions. The General Division did not find it likely that this kind of mistake would have happened three times. It therefore found that the Claimant had subjective knowledge that the information she was providing was false or misleading.

[27] I find no reviewable error made by the General Division who rejected the Claimant's explanation and concluded that the Claimant acted knowingly because she knew she was outside of Canada during the relevant periods. The decision is based on the evidence and is consistent with the law and case law on the issue of penalty.

[28] This ground of appeal has no reasonable chance of success.

## **Availability**

[29] To be eligible to receive benefits, claimants must prove that they are capable of and available for work—on any given workday—and are unable to find suitable employment.<sup>7</sup>

[30] Availability must be determined by reviewing three factors:

- the desire to return to the labour market as soon as a suitable job is offered;
- the expression of that desire through efforts to find a suitable job, and
- the non-setting of personal conditions that might unduly limit the chances of returning to the labour market.<sup>8</sup>

[31] Furthermore, availability is determined for each working day in a benefit period for which a claimant can prove that on that day they are capable of and available for work, and unable to obtain suitable employment.<sup>9</sup>

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<sup>7</sup> Section 18(1)(a) of the *Employment Insurance Act*.

<sup>8</sup> *Faucher v Canada* (CEIC), A-56-96.

<sup>9</sup> *Canada (Attorney General) v Cloutier*, 2005 FCA 73.

[32] The Claimant submits that she was fully available from February 15, 2022, and that she can also show the job descriptions where she applied that demonstrate she can work without no time restrictions. She submits that she applied for jobs which matched her skills and experience.

[33] The General Division acknowledged that to find jobs to apply to, the Claimant had to assess job opportunities. It found that the Claimant made some effort to find work after she quit her previous job. But there were no job applications after her children's school year ended in June, until November 11, 2022. It found that her job search efforts were sporadic. The General Division determined that the Claimant's efforts were not enough to satisfy the second factor of the *Faucher* test.

[34] To be entitled to benefits, a claimant must establish their availability for work, and to do this, they must actively look for work. A claimant must establish their availability for work for each working day in a benefit period and this availability must not be unduly limited.

[35] The evidence supports the General Division's conclusion that the Claimant did not demonstrate that she was available for work but unable to find a suitable job. A mere statement of availability is not enough for a claimant to discharge the burden of proof. Before the General Division, the Claimant did not meet her burden of proof.

[36] I must reiterate that the Appeal Division's role is not to re-weigh the evidence and set aside the decision of the General Division. The Appeal Division has no jurisdiction to interfere in the General Division's findings of fact when they are not perverse, capricious or made without regard to the material that was before it.<sup>10</sup>

[37] I see no reviewable error made by the General Division. The Claimant does not meet the relevant factors to establish availability under the law.

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<sup>10</sup> *Page v Canada (Attorney General)*, 2023 FCA 169.

## **Conclusion**

[38] After reviewing the appeal docket and the General Division's decision as well as considering the Claimant's arguments in support of her request for leave to appeal, I have no choice but to find that the appeal has no reasonable chance of success.

[39] Leave to appeal is refused. This means the appeal will not proceed.

Pierre Lafontaine  
Member, Appeal Division