



Citation: *OS v Canada Employment Insurance Commission*, 2025 SST 284

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: O. S.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated February 24, 2025
(GE-25-284)

Tribunal member: Glenn Betteridge

Decision date: March 25, 2025

File number: AD-25-203

Decision

[1] Leave (permission) to appeal is refused. The appeal won't go forward.

Overview

[2] O. S. is the Claimant. She wants to appeal a General Division decision. I can give her permission if her appeal has a reasonable chance of success.

[3] To get EI regular benefits, a person has to be available for work. This means they have to show they are actively looking for and will accept suitable work on an ongoing basis.

[4] The General Division found the Claimant wasn't available for work from July 28 to September 7, 2024. She came back from a sick leave on August 6, 2024 and worked half days for her employer. That was the schedule it offered her. The General Division found she was fully recovered and could work full-time. But she waited to go back full-time with her employer instead of looking for work. So it decided she wasn't entitled to regular benefits.

[5] The Claimant argues she should get EI benefits to supplement her part-time earnings. And she says the General Division should have helped her more. Because she represented herself and the appeal process was new to her.

[6] Unfortunately for the Claimant, her appeal doesn't have a reasonable chance of success.

Issue

[7] Does the Claimant's appeal have a reasonable chance of success?

I am not giving the Claimant permission to appeal

[8] 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 hearing recording.³ Then I made my decision.

[9] 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 success⁴

[10] I can give the Claimant permission to appeal if her appeal has a reasonable chance of success.⁵ This means she has to show an **arguable ground of appeal** upon which her appeal **might succeed**.⁶

[11] I can consider four grounds of appeal, which I call **errors**.⁷ 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

[12] The Claimant's reasons for appeal set out the key issues and central arguments I have to consider.⁸ Because the Claimant is representing herself, I will also look beyond her arguments when I apply the permission to appeal test.⁹

¹ See AD1.

² See GD2 to GD7.

³ The hearing lasted approximately 38 minutes.

⁴ See *Paradis v Canada (Attorney General)*, 2016 FC 1282 at paragraph 32.

⁵ See section 58(2) of the *Department of Employment and Social Development Act* (DESD Act).

⁶ See *Osaj v Canada (Attorney General)*, 2016 FC 115.

⁷ See section 58(1) of the DESD Act.

⁸ See *Hazaparu v Canada (Attorney General)*, 2024 FC 928 at paragraph 13.

⁹ 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*

[13] The Claimant checked the boxes that say the General Division didn't follow procedural fairness and made an important error of fact. Before I consider those two arguments, I will briefly deal with another error she alleged.

– **I don't accept the Claimant's argument about error of law**

[14] The Claimant says the General Division made an error of law.¹⁰ But she didn't explain or give any details about this. When a claimant doesn't explain or give details about an alleged error, that ground of appeal has no reasonable chance of success.¹¹

[15] The Claimant says the Canada Employment Insurance Commission's agents didn't clearly tell her she should look for work. The General Division dealt with this issue when it found the Commission could not deny her benefits based on section 50(8) of the *Employment Insurance Act* (paragraphs 11 to 14). It reviewed the relevant evidence and applied the correct law.

[16] So there isn't an arguable case the General Division made an error of law.

There isn't an arguable case the General Division process was unfair to the Claimant

[17] The Claimant checked the box that says the General Division didn't follow procedural fairness.¹² She argues the process was unfair because as a person who "self-represented I wasn't given clear and adequate information."¹³ She says it was her first time and she wasn't sure about the right questions to ask.¹⁴ So she didn't know from what point to explain herself in order to justify her points. She says she feels the General Division didn't understand her well.

[18] I don't accept the Claimant's argument.

(Attorney General), 2016 FC 874; *Karadeolian v Canada (Attorney General)*, 2016 FC 615; and *Joseph v Canada (Attorney General)*, 2017 FC 391.

¹⁰ See AD1-3.

¹¹ See *Twardowski v Canada (Attorney General)*, 2024 FC 1326 at paragraph 59.

¹² See AD1-3.

¹³ See AD1-3.

¹⁴ See AD1-4.

[19] The General Division makes an error if it uses an unfair process.¹⁵ 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.¹⁶

[20] The Claimant hasn't argued the General Division member was biased against her or prejudged her case. And I didn't read or hear anything in the General Division record that suggests this.

[21] The General Division gave the Claimant an opportunity to know the case she had to meet. The Tribunal sent her the Commission's appeal file (GD3) and its written arguments (GD4). At the General Division hearing she acknowledged she received and read those documents.¹⁷ She agreed with the General Division about the one issue it had to consider and decide—the Claimant's availability for work from July 28 to September 27, 2024.¹⁸ And the General Division explained the law to the Claimant—what she had to show in order to succeed.¹⁹

[22] The General Division gave the Claimant a full and fair opportunity to present her evidence and make arguments. And the General Division asked her questions to better understand her evidence and arguments, and to draw out relevant evidence.²⁰ Finally, the General Division gave the Claimant the chance to say anything else about her appeal.²¹

[23] The Tribunal has designed its process for self-represented people. The tribunal rules tell members to be flexible and actively adjudicate appeals. This is meant to

¹⁵ This is a ground of appeal under section 58(1)(a) of the DESD Act.

¹⁶ See *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69; and *Kuk v Canada (Attorney General)*, 2024 FCA 74.

¹⁷ Listen to the recording of the General Division hearing at 1:32 to 2:55.

¹⁸ Listen to the recording of the General Division hearing at 5:10.

¹⁹ Listen to the recording of the General Division hearing at 5:38 to 6:17.

²⁰ Listen to the recording of the General Division hearing at 6:17; 19:45; 22:24; 24:02; 28:00; 30:15; and 31:49.

²¹ Listen to the recording of the General Division hearing at 33:35.

promote access to justice and allow every party to participate fully in the process even if they don't have a representative.

[24] The Claimant didn't have to be clear about the right questions to ask. The hearing was her opportunity to present her side of the story, her evidence and arguments. The General Division had to explain the law and ask relevant questions to decide the legal issues in the Claimant's appeal. And that's what it did.

[25] To summarize this section, the Claimant hasn't shown there is an arguable case the General Division process or hearing was unfair to her.

There isn't an arguable case the General Division made an important factual error

[26] The Claimant checked the box that says the General Division made an important error of fact.

[27] The Claimant's reasons show me she is trying to reargue her appeal based on new evidence. I haven't considered her new evidence.²² The Appeal Division process isn't the Claimant's chance to reargue her appeal or put in new evidence. She has to show the General Division made an error based on the evidence it had.

[28] 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.²³ In other words, there is evidence that goes squarely against or doesn't support a factual finding the General Division made to reach its decision.

[29] There isn't an arguable case the General Division made an important factual error. I reviewed the General Division documents and listened to the hearing recording.

²² She writes about her conversations with her social worker. She says she can get a letter. She also writes that she told her employer to call her if they were short-staffed.

²³ 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.

The General Division didn't ignore or misunderstand evidence that was relevant to the law it had to apply.

[30] The General Division decision is supported by the relevant evidence, which it considered then weighed (paragraphs 20 to 26, 28, 31 to 33, and 36).

[31] The General Division asked her about a crucial contradiction in the evidence about when she was fit to work full-time. She testified she was fit to return to full-time work as of July 5, 2024, but decided to take a month personal break.²⁴ The General Division weighed the relevant evidence and found she was capable of working, and a suitable job for her was one with no restrictions in hours of work (paragraph 26).

[32] This meant to get EI regular benefits as of August 6, she had to look for full-time work or part-time work that would bring her up to full time. But she didn't. She waited until September 7, 2024, when she went back full-time with her employer (paragraph 33).

Conclusion

[33] The Claimant hasn't shown an arguable case the General Division made an error that might change the outcome in her appeal. And I didn't find an arguable case.

[34] 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

²⁴ Listen to the recording of the General Division hearing at 6:17; 11:20; and 18:08.