Citation: *JT v Canada Employment Insurance Commission*, 2025 SST 266

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	J. T.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated March 5, 2025 (GE-25-215)

Tribunal member:	Stephen Bergen
Decision date:	**March 21, 2025**
File number:	AD-25-167

Decision

[1] I am refusing leave (permission) to appeal. The appeal will not proceed.

Overview

[2] J. T. is the Applicant. I will call him the Claimant because this application is about his claim for Employment Insurance (EI) benefits. The Respondent is the Canada Employment Insurance Commission, which I will refer to as the Commission.

[3] The Claimant did not apply for EI benefits, for almost a year after his last day of work. He did not have enough insurable hours to qualify for benefits, so he asked for an antedate.

[4] The Commission refused to antedate his claim, which meant that the Claimant did not qualify to establish a benefit period. The Commission also decided that the Claimant had not proven that he was not entitled to benefits because he was not available for work. When the Claimant asked the Commission to reconsider, it would not change its decisions.

[5] The Claimant appealed both decisions to the General Division of the Social Security Tribunal, but the General Division dismissed his appeal. Now he is asking for leave to appeal to the Appeal Division.

[6] I am refusing leave to appeal. The Claimant has not made out an arguable case that the General Division made an important error of fact.

Issues

[7] Is there an arguable case that the General Division made an important error of fact,

a) by overlooking or misunderstanding the Claimant's learning disability?

b) by overlooking or misunderstanding the actions or behaviour of the Commission?

c) by overlooking or misunderstanding the Claimant's belief that his employment was continuing?

I am not giving the Claimant permission to appeal

General Principles

[8] For the Claimant's application for leave to appeal to succeed, his reasons for appealing would have to fit within the "grounds of appeal." The grounds of appeal identify the kinds of errors that I can consider.

[9] I may consider only the following errors:

a) The General Division hearing process was not fair in some way.
b) 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 (error of jurisdiction).
c) The General Division based its decision on an important error of fact.
d) The General Division made an error of law when making its decision.[1]

[10] To grant this application for leave and permit the appeal process to move forward, I must find that there is a reasonable chance of success on one or more grounds of appeal. Other court decisions have equated a reasonable chance of success to an "arguable case."[2]

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[1] This is a plain language version of the grounds of appeal. The full text is in section 58(1) of the *Department of Employment and Social Development Act* (DESDA).
[2] See *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; and *Ingram v Canada (Attorney General)*, 2017 FC 259.

Analysis

Important error of fact

[11] The General Division makes an important error of fact only when it **bases its decision** on a finding that ignores or misunderstands **relevant** evidence, or on a finding that does not follow rationally from the evidence.[3]

– The Claimant's learning disabilities

Re: Antedate

[12] The Claimant argued that the General Division did not consider his learning disability. He is apparently referring to Attention Deficit Hyperactivity Disorder (ADHD), since no other mental or cognitive disability is mentioned in the record.

[13] There is no arguable case that the General Division made an error of fact by ignoring the Claimant's ADHD when it considered whether he should be entitled to an antedate.

[14] When the Claimant discussed his request for reconsideration of the antedate decision on January 22, 2025, he mentioned that he accepted his mother's advice that he would not be entitled to EI benefits. He also said that his "ADHD brain didn't think otherwise." This is the only mention of ADHD, in which the Claimant links the condition to his delay in applying for benefits.

[15] The General Division did not mention that the Claimant referred to his ADHD brain. However, the Claimant also repeatedly said that he did not apply earlier because he was convinced that he did not qualify. He said he did not look into it, because he relied on his mother's advice.

[3] I have tried to make this error more understandable. This ground of appeal is defined in section 58(1)(c) of the DESDA: The General Division will have made an error of fact where it, "based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it."

[16] Although he referred to his "ADHD brain" at one point, he did not elaborate. There was no evidence to confirm the Claimant's self-diagnosis of ADHD, or to explain how or why his ADHD would interfere with his ability to seek information about his entitlement to benefits.

[17] The Claimant did not begin to question his entitlement for almost an entire year. He did not explain how his ADHD would prevent him from questioning the advice he received from his mother, or from visiting or calling a Service Canada office for advice, or researching his entitlement online — for almost a year.

[18] The General Division is not required to refer to each and every piece of evidence. It is generally presumed to have considered all the evidence.[4] The single reference to "ADHD brain" would not have been of much use as evidence, so it is not that surprising that the General Division omitted to mention it. It does not mean that the General Division ignored it.

Re: Availability

[19] The Claimant also mentioned he had ADHD during a discussion about the "availability for work" issue at his General Division hearing. The member asked him about physical restrictions that could have limited his job prospects. The Claimant responded that that he has ADHD and a couple of other conditions, but said that he just tries to "live with them."[5] He also mentioned his ADHD when he explained that he had been "hyper-focused" on his appeal, rather than focused on looking for work.[6]

[20] There is no arguable case that the General Division made an important error of fact by failing to mention the ADHD when it analyzed his availability.

[21] The Claimant's references to ADHD were almost incidental. He did not explain how his ADHD would have significantly impaired his ability to look for more jobs than he did. If the period of his "appeal" is considered to start with his initial denial in December

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[4] *Simpson v Canada (Attorney General)*, 2012 FCA 82.
[5] Listen to the audio recording of the General Division at timestamp: 0:51:50.
[6] Listen to the audio recording of the General Division at timestamp: 0:55:50.

2024, and run through to his February 2025 General Division hearing, the Claimant was not required to do very much during most of the appeal. Up to January 3, 2025, when he filed his Notice of Appeal, he had only to file the Request for Review document and have a couple of telephone conversations with Commission agents. The Claimant did not explain how he could be so hyper-focused (or how his ADHD could cause him to be so hyper-focused) on the appeal, as to significantly restrict his job search from November 30, 2023, to November 12, 2024, when he applied for benefits.

[22] In discussion with the General Division, he was asked if there was anything else (other than what his mother had told him about his eligibility) that impacted his ability to manage his affairs.[7] He did not mention his ADHD, or any other mental impairment or learning disability.

[23] Once again, I will presume the General Division considered the ADHD evidence. The General Division did not refer to it, but it would have been of little probative value. I may presume it was considered.

– **The actions of the Commission**

[24] The Claimant also asserted that the General Division did not refer to how the Commission (or Service Canada) had handled the investigation of his claim.

[25] There is no arguable case that the General Division made an error of fact by not referring to details of the Commission's investigation or decision process.

[26] The General Division mentioned something of the Claimant's difficulties with the Commission, but did not go into much detail. However, the Commission's behaviour was not relevant. Neither the General Division nor the Appeal Division exercise oversight over the Commission's processes. The Claimant may believe that a Commission agent misunderstood him, or that they were discourteous or made a hasty decision, but this was not an issue before the General Division.

[7] See GD3-49,

[27] Nothing the Commission said or did could possibly have been relevant to his antedate request, since the Claimant did not speak to the Commission until after he applied for benefits.

[28] In respect of the "availability for work" issue, it is not relevant whether the Commission understood what he said about looking for work. The Claimant's remedy was through his appeal to the General Division. He has not suggested that the General Division also misunderstood his evidence of job search efforts.

– **When the Claimant learned he was unemployed**

[29] The Claimant argued that he did not delay his application once he knew he was unemployed. He said that he did not know he was not "on the books" until he received his Record of Employment. [8]

[30] There is no arguable case that the General Division made an error of fact when it came to the question of when the Claimant learned he was unemployed.

[31] The General Division noted the Claimant's testimony that he was not aware that the employer did not consider him an employee until just before he applied for benefits. It referred to his testimony that his employer had never contacted him, or responded to his calls, to tell him that he was not working there anymore. It noted that the Claimant had not received his Record of Employment and thought he was still "on the books" with the employer even while he was looking for other work.[9] It understood that he spoke to someone that he used to work with, who told him he could apply for EI.[10] He applied for benefits within days of discovering that he could apply.

[32] The Claimant did not suggest that the General Division misstated this evidence or that it failed to consider other relevant evidence to which it did not refer.

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[8] See GD3-26: The ROE is dated November 13, 2024. See also GD3-21: The Claimant applied for benefits before the date of the ROE, on November **12**, 2024.
[9] See the General Division decision at para 24.
[10] GD3-49.

[33] Because the Claimant believed he was still employed until just before he applied, he also argued that his antedate was moot. It seems that he is arguing that the General Division did not appreciate the significance of his evidence, because the General Division did not recognize that it meant his antedate was moot.

[34] The Claimant did not argue to the General Division that his antedate was moot, and such an argument would not have assisted him. The issue before the General Division was whether the Claimant was entitled to an antedate. The Claimant appealed to have his antedate request accepted because he would not otherwise have had enough hours to qualify.

[35] The Claimant said that he did not think he was entitled to EI because he had been paid commission. The General Division said that a reasonable person would have looked into whether his employer had deducted EI premiums from his paycheques.

[36] The Claimant also said he did not know he was unemployed, but he had no work, pay, or contact with the employer since his last paycheque on November 30, 2023. The General Division found that the Claimant did not do what a reasonable person would do to inform himself of his rights and responsibility.

[37] It is implicit in the decision that the General Division considered the Claimant to have left his job after his last day of work or after his last paycheque, regardless of when he finally received his ROE. Despite the Claimant's assertion that he believed he was still working until he saw the ROE, this was not supported by evidence. The Claimant had acknowledged to the Commission that he no longer believed he was an employee by January of February (2024).[11] When the General Division member questioned him about his statement, the Claimant did not accept that it was accurate, but he nonetheless confirmed that he had thought by then that the employer would not be calling him back.[12]

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[11] See GD3-53.
[12] Listen to the audio recording of the hearing at timestamp: 00:16:00.

[38] In addition, the significant length of time without work, pay, or contact from the employer, in the absence of any alternative explanation, supports a natural inference that the Claimant was no longer employed.

[39] There is nothing in the General Division record to suggest that the General Division misunderstood what the Claimant believed about his employment status. There is nothing to suggest that its conclusion that the Claimant did not act reasonably does not follow rationally from the evidence.

– **What does reasonable mean in the circumstances?**

[40] The Claimant may disagree with the General Division's conclusion that he did not have good cause for his delay because he did not act as a "reasonable" person or take "reasonably prompt steps" to determine his rights and obligations under the *Employment Insurance Act*. But the Appeal Division has no authority to interfere with such a conclusion.

[41] The General Division's determination that his actions were not "reasonable" or "reasonably prompt" are applications of settled law to the facts. This is what is termed "questions of mixed fact and law." The Federal Court of Appeal has held that the Appeal Division has no jurisdiction to consider errors of fact and law.[13]

[42] The Claimant's appeal has no reasonable chance of success.

[43] I appreciate that this will be a disappointing result for the Claimant. Unfortunately, the Federal Court of Appeal has held that, "[t]he obligation and duty to promptly file a claim is seen as very demanding and strict. This is why the 'good cause for delay' exception is cautiously applied."[14]

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[13] See *Quadir v Canada (Attorney General)*, 2018 FCA 21.
[14] See *Canada (Attorney General) v Brace*, 2008 FCA 118.

Conclusion

[44] I am refusing permission to appeal. This means that the appeal will not proceed.

Stephen Bergen
Member, Appeal Division