



Citation: *SC v Canada Employment Insurance Commission*, 2025 SST 295

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

### **Leave to Appeal Decision**

**Applicant:** S. C.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated July 8, 2024  
(GE-24-1451)

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**Tribunal member:** Solange Losier

**Decision date:** March 27, 2025

**File number:** AD-25-99

## Decision

[1] An extension of time to apply to the Appeal Division is granted. Leave (permission) to appeal is refused. The appeal will not proceed.

## Overview

[2] S. C. is the Claimant in this case. He applied for Employment Insurance benefits (benefits) when he stopped working. He was out of Canada while he was on claim.

[3] The Canada Employment Insurance Commission (Commission) decided that he wasn't entitled to get benefits while he was out of Canada.<sup>1</sup>

[4] The General Division dismissed the Claimant's appeal. It was not persuaded that the Claimant got the medical treatment in the United States that wasn't readily or immediately available where he was living in Canada.<sup>2</sup> It concluded that he wasn't entitled to get benefits for the period he was out of Canada.<sup>3</sup>

[5] The Claimant is now asking for permission to appeal. He argues that the General Division failed to follow a fair process and made an error of law.<sup>4</sup>

[6] I am denying permission to appeal because the Claimant's appeal has no reasonable chance of success.<sup>5</sup>

## Preliminary matters

[7] The Claimant's application looked like it was filed late, so I asked him for additional information about his appeal. I specifically asked him to tell me when the

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<sup>1</sup> See Commission's initial and reconsideration decision at page GD3-49.

<sup>2</sup> See section 55(1)(a) of the *Employment Insurance Regulations* (EI Regulations).

<sup>3</sup> See General Division's decision at pages AD1A-1 to AD1A-6 and section 37(b) of the *Employment Insurance Act* (EI Act).

<sup>4</sup> See application to the Appeal Division at pages AD1-1 to AD1-7.

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

General Division's decision was communicated to him.<sup>6</sup> The Claimant replied to my request and I've considered his reply.<sup>7</sup>

## Issues

[8] The issues in this appeal are:

- a) Was the application to the Appeal Division late? If so, should I extend the time for filing the application?
- b) Is there an arguable case that the General Division failed to follow a fair process?
- c) Is there an arguable case that the General Division made an error of law?

## Analysis

### **The application to the Appeal Division was not late**

[9] The General Division issued its decision on July 8, 2024. The Tribunal file shows that the decision was emailed to the Claimant's email address on the same date (the provided in his appeal forms).<sup>8</sup>

[10] The Claimant only applied to the Appeal Division a few months later, on February 10, 2025. He wrote that he got the General Division decision on January 24, 2025.<sup>9</sup>

[11] As noted above, I wrote to the Claimant because it looked like his application was filed late. I asked him to explain how he found out about the General Division decision on January 24, 2025 (especially since our records show that we emailed it to him on July 8, 2024).

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<sup>6</sup> See Tribunal letter dated February 17, 2025.

<sup>7</sup> See Claimant's response at pages AD1B-1 to AD1B-2; AD3-1 to AD3-8 and AD4-1 to AD4-16.

<sup>8</sup> See page GD2-2.

<sup>9</sup> See page AD1-1.

[12] The Claimant wrote back to me explaining that he is 73 years old and that he only got the “information” accidentally. He isn’t familiar with computers and a friend helped him.

[13] I believe the Claimant when he says that he only got the General Division decision on January 24, 2025.

[14] I find that the General Division decision was communicated to the Claimant on January 24, 2025—this is the “communication date.” The deadline to file his application to the Appeal Division was February 24, 2025.<sup>10</sup>

[15] Since the Claimant filed his application on February 10, 2025, I find that it was filed on time. It isn’t necessary to decide whether to grant an extension of time, because I’ve already found that the Claimant’s application was filed on time.<sup>11</sup>

### **I am not giving the Claimant permission to appeal**

[16] An appeal can proceed only if the Appeal Division gives permission to appeal.<sup>12</sup>

[17] I must be satisfied that the appeal has a reasonable chance of success.<sup>13</sup> This means that there must be some arguable ground upon which the appeal might succeed.<sup>14</sup>

[18] I can only consider certain types of errors. I have to focus on whether the General Division could have made one or more of the relevant errors (this is called the “grounds of appeal”).<sup>15</sup>

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<sup>10</sup> See section 57(1)(a) of the DESD Act.

<sup>11</sup> It says this in section 27(2) of the *Social Security Tribunal Rules of Procedure*.

<sup>12</sup> See section 56(1) of the DESD Act.

<sup>13</sup> See section 58(2) of the DESD Act.

<sup>14</sup> See *Osaj v Canada (Attorney General)*, 2016 FC 115, at paragraph 12.

<sup>15</sup> See section 58(1) of the DESD Act.

[19] The possible grounds of appeal to the Appeal Division are that the General Division did one of the following:<sup>16</sup>

- proceeded in a way that was unfair
- acted beyond its powers or refused to exercise those powers
- made an error in law
- based its decision on an important error of fact.

[20] The Claimant argues that the General Division didn't follow a fair process and made an error of law, so that's what my decision will focus on.<sup>17</sup>

– **There is no arguable case that the General Division didn't follow a fair process**

[21] Procedural fairness is about the fairness of the process. It includes procedural protections including the right to an unbiased decision-maker, the right of a party to be heard and to know the case against them and to be given an opportunity to respond.

[22] Put another way, if the General Division didn't follow a fair process, then I can intervene.<sup>18</sup>

[23] I've looked at the Claimant's arguments. He hasn't pointed out how the General Division didn't follow a fair process.<sup>19</sup> Even so, I reviewed the file and the General Division decision.

[24] I see no indication that the General Division didn't follow a fair process. The General Division hearing was held in writing (at the Claimant's request).<sup>20</sup> The General Division wrote to the Claimant to invite him to submit additional information and arguments about his case.<sup>21</sup> It gave him enough time to reply, but he did not reply. The

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<sup>16</sup> See section 58(1) of the DESD Act.

<sup>17</sup> See page AD1-2.

<sup>18</sup> See section 58(1)(a) of the DESD Act.

<sup>19</sup> See pages AD1-2; AD1B-1 to AD1B-2; AD3-1 to AD3-8; AD4-1 to AD4-16.

<sup>20</sup> See page GD2-3.

<sup>21</sup> See pages GD5-1 to GD5-3.

General Division proceeded and only rendered its decision two months after the deadline set out in the letter based on the evidence in the file.<sup>22</sup>

[25] The Claimant's arguments to the Appeal Division amount to a disagreement with the outcome (that he was not entitled to get benefits while outside of Canada).

[26] The Appeal Division's mandate is limited to deciding whether the General Division might have made a reviewable error and not whether the result was unfair. Also, it isn't an opportunity for the parties to re-argue their case in order to get a different outcome.

[27] There is no arguable case that the General Division didn't follow a fair process.<sup>23</sup>

– **There is no arguable case that the General Division made an error of law**

[28] An error law happens when the General Division does not apply the correct law or uses the correct law but misunderstands what it means or how to apply it.<sup>24</sup>

[29] The Claimant argues that he was free to travel, to choose not to vaccinate and to see his family abroad (his son is in the United States). He feels that he is being punished by the law. He hasn't pointed out how the General Division made an error of law.

[30] The law requires a physical presence in Canada to get benefits, according to section 37 of the *Employment Insurance Act* (EI Act).

[31] A person isn't entitled to benefits while outside of Canada unless they meet one of the exceptions in section 55 of the *Employment Insurance Regulations* (EI Regulations).

[32] One of those exceptions is "for the purpose of undergoing, at a hospital, medical clinic or similar facility outside Canada, medical treatment that is not readily or

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<sup>22</sup> The General Division indicated that the deadline to reply was May 9, 2024, and it issued its decision on July 8, 2024.

<sup>23</sup> See section 58(1)(a) of the DESD Act.

<sup>24</sup> See section 58(1)(b) of the DESD Act.

immediately available in the claimant's area of residence in Canada, if the hospital, clinic or facility is accredited to provide the medical treatment by the appropriate governmental authority outside Canada."<sup>25</sup>

[33] The General Division found that the Claimant had left Canada on July 12, 2022, to get medical treatment from his son, who is a doctor in the United States. It said that he returned to Canada on July 21, 2022.<sup>26</sup>

[34] The General Division correctly stated the law in its decision. It considered whether the Claimant had met the above exception involving medical treatment.<sup>27</sup> However, it decided that the Claimant hadn't proven he couldn't get medical treatment for his high blood pressure, back pain, depression and sleeping issues that wasn't readily or immediately available where he lives in Canada.

[35] There is no arguable case that the General Division made an error of law. It correctly cited and applied the law in its decision.<sup>28</sup>

– **There are no other reasons to give permission to appeal**

[36] I reviewed the file and reviewed the General Division decision. I did not find any relevant evidence that the General Division might have ignored or misinterpreted.<sup>29</sup>

## Conclusion

[37] Permission to appeal is refused. This means that the Claimant's appeal will not proceed. It has no reasonable chance of success.

Solange Losier  
Member, Appeal Division

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<sup>25</sup> See section 55(1)(a) of the EI Regulations.

<sup>26</sup> See paragraph 7 of the General Division decision.

<sup>27</sup> See paragraphs 13–15 of the General Division decision.

<sup>28</sup> See section 58(1)(b) of the DESD Act.

<sup>29</sup> The Federal Court recommends doing such a review in decisions like *Griffin v Canada (Attorney General)*, 2016 FC 874, and *Karadeolian v Canada (Attorney General)*, 2016 FC 615.