Citation: *BF v Canada Employment Insurance Commission*, 2025 SST 287

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	B. F.
Respondent:	Canada Employment Insurance Commission
Representative:	Dionisios Kopitas

Decision under appeal:	General Division decision dated November 18, 2024 (GE-24-2419)

Tribunal member:	Stephen Bergen
Type of hearing:	Teleconference
Hearing date:	March 13, 2025
Hearing participants:	Appellant Respondent's representative
Decision date:	March 25, 2025
File number:	AD-24-835

Decision

[1] I am dismissing the appeal. The General Division did not make an important error of fact.

Overview

[2] B. F. is the Appellant, but I will call him the Claimant because his 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 is an apprentice tradesperson. After he was laid off by one employer on October 20, 2023, he took another job. He quit the second job on October 24, 2023, after working only two days. The Claimant filed an application to renew his claim for Employment Insurance EI benefits on January 2, 2024, with the expectation that he would obtain EI support to return to school for the classroom component of his apprenticeship.

[4] The Commission decided that the Claimant did not have just cause for leaving his second job, which meant that he could not receive EI benefits. The Claimant asked the Commission to reconsider, but it would not change its decision.

[5] The Claimant appealed to the General Division of the Social Security Tribunal. The General Division dismissed his appeal, so the Claimant appealed the General Division decision to the Appeal Division.

[6] I am dismissing the appeal. The General Division did not make an important error of fact.

Preliminary matters

New Evidence

[7] When the Claimant filed his application to the Appeal Division, he submitted some additional materials as evidence. These materials included an audiology

prescription, a letter from a pediatrician confirming the Claimant's DSM diagnoses, some form of learning plan, and a detailed report from the Autism Spectrum Disorder Clinic.[1]

[8] All of this is new evidence that was not available to the General Division. The Claimant apparently submitted this evidence to the Appeal Division to establish circumstances that he believes should be relevant to his decision to leave his employment. In other words, the purpose of the evidence is to help the Claimant prove that he had no reasonable alternatives to leaving his employment in all the circumstances.

[9] The courts have confirmed that the Appeal Division cannot consider new evidence for the purpose of proving a disputed issue. I will not be considering the claimant's documentation.[2]

Issue

[10] Did the General Division make an important error of fact by:

a) mistaking evidence of the nature of the Claimant's work after he left his job, or
b) mistaking evidence of the nature of his impairment?

Analysis

General Principles

[11] The Appeal Division may only consider errors that fall within one of the following grounds of appeal:

a) The General Division hearing process was not fair in some way.

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[1] See AD1 at pages 8 to 53.
[2] See for example the decisions in *Sibbald v Canada (Attorney General)*, *2022 FCA 157*; G*ittens v. Canada (Attorney General)*, 2019 FCA 256; *Marcia v Canada (Attorney General*), 2016 FC 1387; *Bellefeuille v Canada (Attorney General*), 2014 FC 963. See also *Sharma v. Canada (Attorney General)*, 2018 FCA 48, for the exceptions under which new evidence might be considered.

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 made an error of law when making its decision.
d) The General Division based its decision on an important error of fact.[3]

Error of fact

[12] In my earlier "leave to appeal" decision, I identified an argument that the General Division may have made an error in how it understood two facts: I said that it may have made an error when it considered the Claimant's impairment to be "self-inflicted." I also said that it may have made an error in accepting that his self-employment work (after he left his job) was substantially the same as his duties in his regular job.

[13] At the Appeal Division hearing, the Claimant made these same arguments. He said that the General Division misunderstood the nature of his impairment and the nature of his self-employment.

[14] The Commission did not dispute that the General Division made mistakes of fact. It accepted that the General Division mischaracterized these facts.

[15] I agree with the Claimant and the Commission. The General Division's assertion that the Claimant's condition was "self-inflicted" was unsupported by evidence. There was little evidence of the nature of his impairment, but what little is in the record suggests only that the Claimant's impairment was the result of a medical condition.[4]

[16] The evidence before the General Division did not support a finding that he "was clearly working in his regular job as an apprentice electrician." He told the Commission that he worked "a little bit" at some "light duties" and reduced hours' in "basic construction work."[5]

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[3] This is a plain-language version of the three grounds. The full text is in section 58(1) of the *Department of Employment and Social Development Act* (DESDA).
[4] See GD3-37.
[5] Ibid.

[17] I accept that the General Division made factual errors.

[18] However, I can only intervene where the error is such that it might have affected the result. An "important error of fact" is where the General Division has based its decision on an erroneous finding of fact that ignored or misunderstood the evidence or a finding that did not rationally follow from the evidence.[6]

[19] The Commission argues that the General Division's errors could not have affected the result. It says that it does not matter that the Claimant may not have performed comparable duties or worked within comparable conditions during the brief period of his self-employment. These facts would not show that the Claimant was unable to work at his regular job or that he had no reasonable alternatives to leaving. Likewise, the Commission says that it does not matter that the General Division believed the Claimant's condition or impairment to be self-inflicted. Regardless of the how his impairment came about, the General Division did not have enough information about the Claimant's condition to know whether it would have required him to leave his job, or to rule out reasonable alternatives to leaving.

– **The relevance of the self-employment duties**

[20] I accept that the manner in which the General Division characterized the Claimant's self-employment was relevant to its evaluation of reasonable alternatives. The Claimant had produced a medical note, which stated that he was unable to work at his regular job as of October 24, 2023. The General Division understood that the Claimant engaged in self-employment that was essentially the same as his regular duties. From this, it inferred that the Claimant's condition did not prevent him from working at his regular job and said that it contradicted the medical note's conclusion.[7] If the Claimant could still work at his regular job regardless of his medical condition, this

[6] More precisely, section 58(1)(c) of the DESDA states that the General Division makes an error of fact when it "bases 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."
[7] See para 46 of the General Division decision.

would undoubtedly have weakened his argument that he had no reasonable alternatives to quitting his regular job.

[21] The Commission states that the March 13, 2024, medical note was given to the Commission well after he left his employment. It says that the Claimant could have produced the note earlier, and it appears to be suggesting that it was not relevant to the General Division's decision or that the General Division could, or should, have disregarded it.

[22] It cites the *Hines* decision of the Federal Court of Appeal.[8] With respect, the issue in *Hines,* was whether the Umpire acted reasonably when it reconsidered its own decision. The appellate reconsideration process, which was under review, was constrained by certain rules. The reconsideration rules exclude consideration of evidence that does not contain new facts.

[23] The *Hines* decision has nothing to do with whether the General Division could rely on evidence of a medical report obtained after the fact. Regardless of when it was obtained, the medical note could still be considered. It was still evidence of the state of the Claimant's condition at, or leading up to, the time he left his employment (assuming that the Claimant was aware of his condition).

– **The relevance of the "self-inflicted" impairment finding**

[24] The General Division's misunderstanding may also have caused it to infer that the Claimant's employment had nothing to do with his condition. By calling his condition or impairment "self-inflicted," the General Division suggested that the Claimant was in control of whether his condition affected his ability to continue working. This implies that the Claimant's job duties were not responsible for either his condition, any worsening of his condition, or any disability. This too would weaken his argument that he had no reasonable alternative to quitting.

[8] *Canada (Attorney General) v. Hines,* 2011 FCA 252.

[25] The Commission argues that there was little evidence of the nature of the Claimant's condition, or of how his condition was impacted by his working conditions. Despite its factual errors, the General Division could not have concluded that the Claimant exhausted all reasonable alternatives to leaving his job.

[26] The Commission is correct that there is almost no evidence of the Claimant's condition or how his condition may have been affected by his work. Both the Commission and the General Division asked him to provide more detail, but the Claimant was protective of his privacy and refused to disclose anything more. The Claimant was convinced that he was entitled to EI benefits on the basis that he was in an apprenticeship program and about to return to the formal classroom component. Because of this, the Claimant believed his reasons for leaving his employment had nothing to do with his entitlement to benefits while in the training.

[27] He appears to now have a better understanding of his position, and he has submitted additional documentation, which includes a report detailing his condition. Unfortunately, I am unable to consider that evidence, as I noted earlier.

[28] I understand that the General Division made findings of fact that were not supported by the evidence. I also appreciate that those findings were relevant. A correct understanding of the Claimant's medical conditions, disabilities, or impairments, and how they were affected by his working conditions could have been relevant to whether he had reasonable alternatives to leaving his employment.

[29] However, I agree with the Commission. The fact remains that the General Division had no specific evidence of the nature of the Claimant's medical condition or how it was affected by his work. Even if the General Division had accepted that he did not work at the same duties after he left his job and that his impairment was not self-inflicted, there was no evidence on which it could find that his working conditions were a danger to his health or safety.

[30] The General Division suggested some possible reasonable alternatives. It said that the Claimant could have seen a doctor, or reported his concerns (whatever they

might be), asked for an accommodation, or asked for a transfer. The Claimant may know or believe that these alternatives would not have been reasonable because of the nature of his job and of his condition, disability, or impairment, but the General Division could not rule them out without evidence. Its key findings do not depend on the General Division's errors.

Conclusion

[31] I am dismissing the appeal. The General Division did not make an important error of fact.

Stephen Bergen
Member, Appeal Division