Citation: *JP v Canada Employment Insurance Commission*, 2025 SST 363

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

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

Decision under appeal:	General Division decision dated March 24, 2025 (GE-25-555)

Tribunal member:	Glenn Betteridge
Decision date:	April 10, 2025
File number:	AD-25-249

Decision

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

Overview

[2] J. P. is the Claimant. He wants to appeal a General Division decision. I can give him permission if his appeal has a reasonable chance of success.

[3] The General Division dismissed his appeal. It found the Commission properly decided his qualifying period and hours of insurable employment. His qualifying period was limited to 19 weeks based on the start date of his August 2024 claim (first claim).[1] And the General Division agreed he didn't have enough insurable hours to qualify for benefits under his December 2024 claim (second claim).

[4] The Claimant says the General Division made errors of jurisdiction and law, and an important error of fact. His qualifying period should have been extended to 104 weeks. Or the COVID rules that made it easier to qualify should have applied to him. He argues because the Commission made mistakes in his first claim, it can't use that claim to limit his qualifying period under this second claim.

[5] Unfortunately for the Claimant, I can't give him permission to appeal. His appeal doesn't have a reasonable chance of success.

Issue

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

[1] Section 8(1)(b) of the *Employment Insurance Act* (EI Act) says a person's qualifying period goes back to the first day of an immediately preceding benefit period if the resulting period is shorter than 52 weeks.

I'm not giving the Claimant permission to appeal

[7] I read the Claimant's application to appeal.[2] I read the General Division decision. I reviewed the documents in the General Division file.[3] And I listened to the hearing recording.[4] Then I made my decision.

The permission to appeal test screens out appeals that don't have a reasonable chance of success[5]

[8] The Claimant has to show an **arguable ground of appeal** upon which his appeal **might succeed**.[6] 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

[9] The Claimant's reasons for appeal set out the key issues and central arguments I have to consider.[8]

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[2] See AD1.
[3] See GD2, GD3, and GD4.
[4] The hearing took approximately one hour and 20 minutes. The hearing recording is longer because the General Division member started recording at the scheduled start time, but the Claimant joined the teleconference about 28 minutes later.
[5] See section 58(2) of the *Department of Employment and Social Development Act* (DESD Act); and *Paradis v Canada (Attorney General)*, 2016 FC 1282 at paragraph 32.
[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.

The Claimant hasn't shown an arguable case the General Division made an error, and I didn't find an arguable case

– The Claimant's reasons don't show an arguable case

[10] The Claimant checked three error boxes on his application form: error of jurisdiction, error of law, and important factual error. But he doesn't refer to the General Division or the General Division decision in his reasons.

[11] He gives the following reasons:[9]

- chronological ordering of record of employment (ROE), and ROE not properly processed
- wrongfully denied qualifying period extension to 104 weeks, which violated the EI Act[10]
- his claim should have been processed under the temporary rules introduced in response to economic conditions, which he calls "the precedent of retroactive policy adjustments"
- arbitrary implementation of EI coverage created an inconsistent and unfair system

[12] These reasons refer to Commission errors and repeat arguments he made at the General Division.

[13] The Appeal Division process isn't the Claimant's opportunity to reargue his General Division appeal hoping for a different outcome. And simply disagreeing with the General Division decision, or saying the law or the outcome isn't fair, doesn't show an arguable case the General Division made an error.

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[9] See AD1-5.
[10] Sections 8(2), (5), and (7) of the EI Act let the Commission extend a person's qualifying period to a maximum of 104 weeks.

[14] Because the Claimant is representing himself, I will look beyond his arguments to see if I can give him permission to appeal.[11]

– **No arguable case the General Division made a jurisdictional error**[12]

[15] The General Division makes a jurisdictional error when it decides an issue it has no authority to decide. Or when it doesn't decide an issue it has to decide.

[16] The Claimant's chronological ordering or missing ROE argument is about his first claim. The evidence at the General Division shows the Commission accepted his first claim effective August 4, 2024. It paid him 19 weeks of benefits to December 21, 2024. I assume the claim ended once the Commission paid those benefits.[13]

[17] There isn't an arguable case the General Division made a jurisdictional error when it refused to examine the Commission's decision in his first claim.

[18] The Claimant argued his first and second claims were interrelated.[14] He said ideally the General Division could deal with both claims. He said the Commission made two mistakes in the first claim.[15] These mistakes meant his weekly benefit rate was reduced, and he got fewer weeks of benefits. His arguments imply the Commission made an error when it used his first claim to limit the qualifying period in his second claim.[16]

[19] At the hearing the General Division said it had authority to deal with the Commission's reconsideration decision under the second claim.[17] Perhaps the General Division should have included this jurisdictional issue in its written decision. But there

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[11] 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 (Attorney General)*, 2016 FC 874; *Karadeolian v Canada (Attorney General)*, 2016 FC 615; and *Joseph v Canada (Attorney General)*, 2017 FC 391.
[12] Section 58(1)(a) of the DESD Act says it's a ground of appeal where the General Division acts beyond or refuses to exercise its jurisdiction.
[13] See section 10(8)(a) of the EI Act.
[14] Listen to the General Division hearing recording starting at 1:26:50.
[15] Listen to the General Division hearing recording at 54:50; 55:55; and 1:10:03. He says the Commission didn't count a ROE and didn't using the 104-week extended qualifying period.
[16] See section 8(1)(b) of the EI Act.
[17] Listen to the General Division hearing recording at 1:26:48.

isn't an arguable case the General Division made a jurisdictional error. And it doesn't give the Claimant's appeal a reasonable chance of success.

[20] The General Division gets the authority to hear an appeal (and the legal issues it raises) from the Commission's reconsideration decision **plus** a claimant's appeal of that decision to the General Division.[18] There was no evidence the Claimant asked the Commission to reconsider his first claim. And no evidence he appealed a reconsideration decision in his first claim.

[21] The General Division can take a broad approach to its jurisdiction, within the limits of the law, to manage appeals fairly and efficiently.[19]

[22] But what the Claimant asked the General Division to do goes beyond the limits of the law. He didn't ask for a reconsideration of his first claim. So he had no right to appeal that claim to the General Division.

[23] And the General Division didn't have what it needed to consider and decide his first claim. The legal issues and relevant facts in his first claim weren't the same as his second claim. The General Division didn't have the Commission's documents showing its decision in the first claim, or the Commission legal position on the issues.

[24] In summary, there isn't an arguable case the General Division made a jurisdictional error when it identified the issue it had to decide—under his second claim—and decided only that issue (paragraph 8).

– **No arguable case the General Division made an important factual error**

[25] I listened to the hearing recording and reviewed the documents in the file. Then I compared that evidence to the evidence the General Division used in its decision.

[18] See section 113 of the EI Act.
[19] See MS v Canada Employment Insurance Commission, 2022 SST 933 at paragraph 13; and *PM v Minister of Employment and Social Development*, 2021 SST 92 at paragraphs 51 to 53.

[26] I didn't find relevant evidence the General Division ignored or misunderstood. Relevant means important to the legal test the General Division had to use. And the relevant evidence supports the General Division decision.

– **No arguable case the General Division made a legal error**

[27] The General Division considered and rejected the Claimant's 104-week extension argument (paragraph 17). Then it applied the correct law.

[28] I reviewed the General Division decision and the law. The General Division correctly set out the law it had to use (paragraphs 10 to 15, and 21). Then used that law. Section 8(1)(b) was the key section of the EI Act for the Claimant's appeal. The General Division correctly interpreted and applied that section to decide his appeal.

[29] The General Division didn't have to consider the Claimant's third and fourth arguments (see those bullet points, above). I listened to the hearing. The claimant argued the changes that made it easier to qualify for benefits during COVID should apply to him. The General Division pointed out these rules didn't apply because his qualifying period was in 2024—years after those rules expired. As for the Claimant's third argument, the General Division can't consider general principles of fairness and equity. It has to apply the law. And that's what it did.

[30] The General Division's reasons are more than adequate.[20] It grappled with the right questions. It considered the parties' evidence and the arguments it had to consider. And its reasons add up.

[31] All this shows me there isn't an arguable case the General Division made a legal error.

[20] See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211; and *Sennikova v Canada (Attorney General)*, 2021 FC 982 at paragraphs 62 and 63.

Is it too late to challenge the Commission's decision in the first claim?

[32] I understand the Claimant doesn't agree with the Commission's decision in his first claim. He might want to get legal advice about challenging that decision.[21]

[33] The EI scheme makes an exception to the 30-day deadline to request a reconsideration of a Commission decision. The Commission can extend the deadline if a person meets the test in the *Reconsideration Request Regulations*.[22]

[34] If the Commission changes that decision, it could rescind or amend the decision in his second claim.[23]

Conclusion

[35] The Claimant's appeal doesn't have a reasonable chance of success. So, I can't give him permission to appeal the General Division decision.

Glenn Betteridge
Member, Appeal Division

[21] The Claimant lives in Ontario. The Tribunal's website lists organization that might be able to help: www.sst-tss.gc.ca/en/your-appeal/organizations-can-help-ontario.
[22] See the *Reconsideration Request Regulations* at https://laws-lois.justice.gc.ca/eng/regulations/SOR-2013-63/page-1.html.
[23] Section 111 of the EI Act lets the Commission cancel or change a decision when there are new facts or it's satisfied it made the decision based on a mistake about a relevant fact or didn't know a relevant fact.