Citation: *MB v Canada Employment Insurance Commission*, 2025 SST 467

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	M. B.
Representative:	P. Z.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated March 20, 2025 (GE-24-4148)

Tribunal member:	Glenn Betteridge
Decision date:	May 6, 2025
File number:	AD-25-299

Decision

[1] I am not giving M. B. leave (permission) to appeal the General Division decision.

[2] This means her appeal won't go forward. And the General Division decision stands unchanged.

Overview

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

[4] The General Division found the Claimant lost her job for a reason that counts as misconduct under the *Employment Insurance Act*.[1] It found her conduct was intentional and reckless. She didn't alert HR about a mistake in the June 17 email. And after HR found out about the error and told her to return to work at the end of July, she missed three consecutive shifts. The General Division found her employer dismissed her for that reason, and she should have known it would do that. So the General Division decided she could not get benefits.

[5] The Claimant disagrees. She says the General Division made important factual errors. She believes the General Division ignored her employer's errors and her wrongful dismissal. She says the General Division took a harmful approach towards her in how it used the evidence.

[6] I found an arguable case the General Division made a factual error when it ignored evidence that the Claimant and her husband didn't know about the mistake in the June 17 email until July 18. Unfortunately for the Claimant, this error doesn't give her appeal a reasonable chance of success. So I can't give her permission to appeal.

---

[1] See section 30 of the *Employment Insurance Act* (EI Act).

Issues

[7] I have to decide whether the General Division reach its decision by ignoring or misunderstanding relevant evidence about

- the reason the Claimant was dismissed
- when the Claimant first knew about the mistake in the June 17 email
- her medical situation starting July 18, including the date her employer fixed for her to return to work (July 26)

I am not giving the Claimant permission to appeal

[8] 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] I listened to the hearing recording and reviewed a transcript of the recording.[4] Then I made my decision.

[9] For the reasons that follow, I can't give the Claimant permission to appeal.

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

[10] I can give the Claimant permission to appeal if her appeal has a reasonable chance of success.[6] This means she has to show an arguable case her appeal might succeed based on a General Division error.[7]

[11] I can consider four types of **errors**.[8] The General Division

- used an unfair process or wasn't impartial (a procedural fairness error)

---

[2] See AD1.
[3] See GD2, GD3, GD4, GD6, GD7, GD8, GD10, GD11, and GD12.
[4] The Claimant and Tribunal relied on an interpreter. The hearing lasted approximately one hour and 50 minutes.
[5] See *Paradis v Canada (Attorney General)*, 2016 FC 1282 at paragraph 32.
[6] See section 58(2) of the *Department of Employment and Social Development Act* (DESD Act).
[7] See *Osaj v Canada (Attorney General)*, 2016 FC 115.
[8] See section 58(1) of the DESD Act.

- 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.[9] Because the Claimant's representative doesn't have legal training, I will also look beyond her arguments when I apply the permission to appeal test.[10]

The Claimant argues the General Division made three important factual errors[11]

[13] Many of the Claimant's reasons for appeal show she disagrees with the weight the General Division gave to her evidence compared to her employer's evidence. But I can't second-guess the weight the General Division gave to the evidence or reweigh the evidence. [12] Because that's not a ground of appeal (error) the law lets me consider.

[14] The General Division makes an important factual error when it reaches its decision by ignoring or misunderstanding **relevant** evidence. Relevant means **evidence the legal test calls for**. When the General Division makes this error, its decision isn't supported by the evidence.

[15] The Claimant makes three arguments.[13] The General Division ignored or misunderstood

---

[9] See *Hazaparu v Canada (Attorney General)*, 2024 FC 928 at paragraph 13.
[10] 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.
[11] 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.
[12] See *Tracey v Canada (Attorney General)*, 2015 FC 1300 at paragraph 33.
[13] I am summarizing the Claimant's arguments from AD1-3 to AD1-6.

- her evidence that her employer dismissed her because of a complaint she made against a manager
- evidence about when she found out about the mistake in the June 17 email, her return to work date, and evidence that her employer's errors caused
- her medical evidence that shows she was too sick to return to work on July 26

[16] I will consider each argument.

No arguable case the General Division made an important factual error about the reason she was dismissed

[17] The General Division had to consider and weigh the evidence and parties' arguments, then make a finding about the reason the Claimant's employer dismissed her.

[18] That's what the General Division did, without ignoring or misunderstanding the Claimant's evidence.

[19] The General Division reviewed the evidence in detail (paragraphs 15 to 20). It reviewed the Claimant's evidence and arguments about being dismissed in retaliation for a complaint she made (paragraphs 21 to 24). Then it weighed the evidence and found, "the credible and uncontested evidence shows the Appellant lost her employment because she did not return to work as of July 26, 2024" (paragraphs 24 to 33).

[20] So this part of the General Division's decision is supported by the relevant evidence.

The General Division seems to have ignored evidence the Claimant didn't know about the mistake in the June 17 email until July 18

[21] The Claimant disagrees with how the General Division understood and used the email her employer sent her on June 17, 2024. She argues the General Division used that email against her, even though her employer made an error about the date of her

return to work, and she relied on that date. She says HR's error caused the situation, she didn't.

[22] There was a mistake in the June 17 email from HR to the Claimant. The length of her approved vacation plus leave (first paragraph) didn't match the return to work date (second paragraph). The Claimant argued she followed the return to work date—August 9.

[23] The General Division reviewed the evidence and made findings of fact about when she knew about the error, and what she did or didn't do, and why:

- When the Claimant received the June 17 email, she read the first paragraph—the one about 2 weeks of vacation and 15 days' leave of absence—and she considered that to be a mistake because she saw the August 8th and 9th dates in the second paragraph and the second paragraph was the one that said what would happen if she didn't return.[14]

- HR didn't know about the mistake in the June 17 email until the Claimant reached out to her on July 18.[15]

- Before the Claimant reached out on July 18, nobody knew there was a mistake in the June 7 email.[16]

- She didn't bring the mistake to HR's attention. She didn't seek clarification between the 2 conflicting paragraphs. She just said thank you for the email.[17]

- She spotted the obvious inconsistency within this email. She admitted to this in her testimony. She said that when she read it, she thought the first paragraph was a mistake and the second paragraph was correct.[18]

[14] See the second bullet point on page 15.
[15] See the second bullet point on page 20.
[16] See the third bullet point on page 18.
[17] See the fourth bullet point on page 15.
[18] See the third bullet on page 19.

- •But instead of asking HR to clarify the inconsistency, she consciously and deliberately decided not to do so. And this was because she wanted to take advantage of the fact the second paragraph appeared to be in her favour.[19]

[24] I listened to the recording of the General Division hearing. The Claimant and her husband both testified she didn't know about the mistake until July 18.[20] The Claimant also testified as someone whose first language isn't English, she went with the return to work date in the second paragraph because it was clearly stated. For her, the first paragraph was an omission or an error.[21]

[25] But the exact time the Claimant first learned about the mistake was not clear from the evidence. And the General Division didn't ask when her when she first knew about the mistake in the June 17 email.

[26] The General Division seems to have ignored the Claimant's testimony, and her husband's testimony, that she first knew about the mistake on July 18. Or at least, the General Division didn't deal with the contradictory testimony about this, which it needed to do.

[27] Despite this, the General Division found she deliberately disregarded the conflicting statements in the June 17 email in order to take the 30-day leave of absence she wanted (paragraph 52). And this conduct met the legal test for wilful because it was so careless and reckless to be intentional (paragraphs 49 and 50).

[28] So there is an arguable case the General Division based this misconduct finding on an error about the facts.

[29] But even if the General Division did make this important factual error, it would not change the outcome in the Claimant's appeal. She would still be disqualified from

[19] See the fourth bullet on page 19.
[20] Listen to the recording of the General Division hearing at 55:45 and 56:16.
[21] Listen to the General Division hearing recording at 51:20.

getting benefits because the General Division made a second finding of misconduct, without making an error. I explain this in the next section.

No arguable case the General Division made an important factual error when it found she acted recklessly after July 18

[30] The General Division made a second finding of misconduct. It found by July 18, the Claimant unequivocally knew her employer expected her to return to work on July 26. But she consciously and intentionally chose not to return to Canada until August 8. She knew her employer could dismiss her if she missed three consecutive shifts (paragraphs 53 to 66). And that's what happened.

[31] This misconduct finding was separate from the June 17 email.

[32] The Claimant argues the General Division dismissed her medical evidence.[22] She says that evidence shows she could not have flown back to Canada and returned to work between July 18 and July 26 because she was sick. She says the General Division made an error when it gave a medical opinion that her acute sinus and trachea infection was not an obstacle to flying or returning to work. And she explained that she would have sent the medical documents to her employer if she hadn't believed her return to work date was August 9.

[33] The General Division referred to the Claimant's medical evidence—documents and testimony.[23] The General Division gave little weight to her testimony.[24] And it found the medical evidence didn't show she was unable to return to Canada between July 18 and 25.

[34] I have reviewed the Claimant's medical evidence. The General Division didn't ignore or misunderstand her evidence. There was no medical opinion about her fitness to travel. And the medical opinion she wasn't fit to work covered August 9 to 16. This was two weeks after her return to work date of July 26.[25] The General Division

[22] See AD1-4 and AD1-5.
[23] See fifth bullet point on page 15.
[24] See eighth bullet point on page 21.
[25] See GD10-9.

explained why it gave little weight to the Claimant's evidence. So I can't interfere with how it weighed the evidence.

[35] So the relevant evidence supports the General Division's two factual findings. First, she unequivocally knew the employer expected her to return to work on July 26. Second, she understood she would be dismissed if she missed three consecutive shifts.

[36] This means the General Division didn't base its decision she committed misconduct—she acted carelessly and recklessly by not returning to work on July 26—on a factual error. This shows me the General Division didn't make an important factual error, and the relevant evidence supports its decision.

EI benefits are intended for people who haven't caused their unemployment, not to hold employers accountable

[37] The Supreme Court of Canada has said EI benefits are for people who are involuntarily unemployed.[26] In other words, a person who causes a risk of unemployment to become a reality can't get regular benefits.

[38] Although the Claimant disagrees, the General Division found the Claimant caused her unemployment by not going back to work on July 26. The Claimant believes her employer is responsible for her unemployment. At the hearing and in her application, the Claimant focuses on HR's error in the June 17 email, and the poor management decisions and bad conduct of her employer.

[39] I understand why the Claimant would think her employer, the Commission, and the General Division treated her unfairly. But her relationship with her employer is a contractual matter between her and her employer. That's a separate issue from her legal relationship to the public employment insurance scheme, and the question of whether she can get EI benefits.[27] The General Division recognized these points (paragraphs 67 to 70).

---

[26] See *Canada (Canada Employment and Immigration Commission) v Gagnon*, 1988 CanLII 48 (SCC).
[27] See *Lance v Canada (Attorney General)*, 2025 FCA 41 at paragraphs 7 and 8.

[40] The courts have recognized employees can use other laws to hold their employers accountable. In an email the Claimant sent to her employer, she says she is going to contact the labour board.[28] That might be one way the Claimant can try to hold her employer accountable if she believes it wrongfully dismissed her.

Conclusion

[41] The Claimant's 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

[28] See GD3-31.