



Citation: *ES v Canada Employment Insurance Commission*, 2025 SST 332

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: E. S.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated March 19, 2025
(GE-25-472)

Tribunal member: Glenn Betteridge

Decision date: April 7, 2025

File number: AD-25-225

Decision

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

Overview

[2] E. S. is the Claimant. She has asked for permission to appeal a General Division decision.

[3] The *Employment Insurance Act* (EI Act) says a person can't get EI benefits when they're outside Canada.¹ The *Employment Insurance Regulations* (EI Regulations) make limited exceptions. Two exceptions are when a person is outside Canada for a job interview or searching for a job.²

[4] The General Division decided the Claimant didn't meet either exception from March 29 to June 4, 2021. This meant she wasn't entitled to get benefits.³ And she has to pay back the overpayment.

[5] She argues the General Division made legal and factual errors. It based its decision on outdated law. And it didn't account for the exceptional circumstances of the COVID-19 pandemic.

[6] I can give her permission to appeal the General Division decision if her appeal has a reasonable chance of success. Unfortunately, it doesn't.

Issue

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

¹ See section 37(b) of the *Employment Insurance Act* (EI Act).

² See sections 55(1)(e) and (f) of the *Employment Insurance Regulations* (EI Regulations). The interview or job search has to be *bona fide*, meaning real and authentic.

³ The Claimant didn't appeal the General Division's decision she was entitled to benefits from January 20 to January 26, 2021.

I am not giving the Claimant permission to appeal

[8] I read the Claimant's application to appeal.⁴ I read the General Division decision. I reviewed the documents in the General Division file.⁵ Then I made my decision.

[9] The Claimant sent in new evidence about her job search.⁶ I can't consider new evidence unless it meets an exception.⁷ Her evidence doesn't. I have to consider whether the General Division made an error with the evidence it had.

[10] The Claimant disagrees with the law about being outside Canada. She also disagrees with the General Division decision, because it uses that law. She thinks the law should be different because of the COVID-19 pandemic. And because job searching is no longer "location dependent."

[11] Unfortunately for her, EI law is what the legislature and cabinet say it is—not what she wants it to be.

[12] During the COVID-19 pandemic, the legislature and cabinet didn't change the law about being out of Canada or the exceptions. The General Division had to apply the law as it existed. That's what it did. And there isn't an arguable case it made an error.

[13] For this reason and the reasons that follow, I am not giving the Claimant permission to appeal.

The permission to appeal test screens out appeals that don't have a reasonable chance of success⁸

[14] I can give the Claimant permission to appeal if her appeal has a reasonable chance of success.⁹ This means she has to show an **arguable ground of appeal** upon which her appeal **might succeed**.¹⁰

⁴ See AD1.

⁵ See GD2, GD3, GD4, and GD5.

⁶ See AD1-1, AD1-2, and AD1-5 to AD1-7.

⁷ See *Sibbald v Canada (Attorney General)*, 2022 FCA 157.

⁸ See *Paradis v Canada (Attorney General)*, 2016 FC 1282 at paragraph 32.

⁹ See section 58(2) of the *Department of Employment and Social Development Act* (DESD Act).

¹⁰ See *Osaj v Canada (Attorney General)*, 2016 FC 115.

[15] I can consider four grounds of appeal, which I call **errors**.¹¹ 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

[16] The Claimant's reasons for appeal set out the key issues and central arguments I have to consider.¹² The Claimant is representing herself. This means I will also look beyond her arguments when I apply the permission to appeal test.¹³

[17] The Claimant's reasons show me she is appealing the General Division's decision she wasn't entitled to benefits from March 29 to June 4, 2021 (paragraph 3). And its refusal to write off her overpayment (paragraph 4).

[18] The Claimant briefly and accurately summarized her reasons for appeal.

I disagree with the ruling that I was not entitled to EI benefits from March 28, 2021, to June 6, 2021, while outside of Canada. The General Division made errors in law and failed to properly apply the principles of the Employment Insurance Act (EI Act) and Regulations in light of the exceptional circumstances of the COVID-19 pandemic.¹⁴

[19] Then she details the legal errors and factual errors she says the General Division made. Each argument is about the way the General Division failed to take into account the COVID-19 pandemic or changes to job searching.

¹¹ See section 58(1) of the DESD Act.

¹² See *Hazaparu v Canada (Attorney General)*, 2024 FC 928 at paragraph 13.

¹³ 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.

¹⁴ See AD1-15.

[20] First, I will consider her arguments about legal errors. Then I will consider important factual errors.

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

[21] The Claimant argues the decision is unfair because it relied on an outdated interpretation of EI rules instead of considering the realities of the COVID-19 job market.¹⁵ She says the General Division made legal errors when it:

- misinterpreted “availability for work” because job search and employment methods fundamentally changed due to COVID-19 pandemic¹⁶
- used an outdated, unfair and unequal interpretation of the EI travel restriction that meant she couldn't get EI benefits when outside Canada¹⁷
- didn't consider and apply the financial hardship and undue hardship (write-off) provisions under section 56 of the EI Regulations to her overpayment

[22] The law doesn't let me give permission to appeal based on the fairness of the General Division decision or the outcome of the appeal for the Claimant.

[23] Availability for work wasn't an issue in the Claimant's appeal of the disentitlement covering March 29 to June 4, 2021. The General Division only needed to consider her availability if she showed she met the job interview or job search exceptions under EI Regulation. This flows from the wording of section 55(1) of the EI Regulations, which makes the exceptions “subject to section 18 of the Act.”¹⁸

[24] The legislature and cabinet didn't change the law about being out of Canada or the job searching exception during the COVID-19 pandemic.

¹⁵ See AD1-17.

¹⁶ See AD1-15.

¹⁷ See AD1-15

¹⁸ See *Canada (Attorney General) v Elyoumni*, 2013 FCA 151.

[25] The General Division interpreted the bona fide job search exception to mean the Claimant's had to show she was in Florida to **search for work in Florida** (paragraphs 45 and 46). The General Division didn't back up this statement with decided cases. But it didn't have to.

[26] The General Division's interpretation follows the modern rule for interpreting words in a law. Its interpretation is correct based on the text, context, and purpose of section 55(1)(f) of the EI Regulations.

- That exception says, “the reason the claimant is outside Canada... [is] to conduct a bona fide job search.”
- The plain and ordinary meaning of the words ties the job search to the location outside Canada. And the job search has to be the primary purpose the person is outside Canada.¹⁹
- Exceptions have to be read narrowly. And the EI Regulations can't undermine the EI Act.
- The outside Canada disentitlement in the EI Act would be meaningless if the exception in the EI Regulation let people job search, to prove they were available while outside Canada—for as long as they chose.
- But if a person thinks they can find a job in a location outside Canada—so they get back to work as soon as possible—the exception allows them up to 14 days to job search in that location.

[27] Technology makes it possible to search for work in Canada from outside Canada. The General Division recognized the Claimant made “thoughtful points” about this (paragraph 57). But the law doesn't permit a person to do that and get benefits. The Federal Court has recognized that “interpretive principles include the interpretation of legislation in light of contemporary technology, including changes to the technological

¹⁹ A number of older tribunal decisions say this. See for example *CUBs* 70307, 71384, and 72529A.

environment in which legislation is to be applied.” But that doesn’t give this Tribunal the power to add new job search exceptions to the EI Regulations.²⁰

[28] This means the General Division could not change the law. It had to follow it. It made this point (paragraphs 57 and 58). And it followed the law when it decided the Claimant’s appeal.

[29] The General Division has no power to decide overpayment write-offs.²¹ In other words, it can’t use section 56 of the EI Regulations. Only the Commission can do that. The General Division made these points (paragraphs 65 and 66).

[30] So, the Claimant’s reasons don’t show an arguable case the General Division made a legal error.

[31] And I didn’t find an arguable case the General Division made a legal error. The General Division set out the correct legal tests (paragraphs 29, 31, and 46). Then it used those tests. The General Division’s reasons are more than adequate.²² It grappled with the right questions. It considered the parties’ evidence and arguments. And its reasons add up.

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

[32] The Claimant argues the General Division made important factual errors when it:

- found her job search efforts could have been done in Canada
- ignored that she was available for work and applying for jobs in Canada—when she was outside Canada

²⁰ See *Fiorino v Canada (Employment Social Security Commission)*, 2022 FC 1705 at paragraphs 30 and 31.

²¹ See section 112.1 of the EI Act.

²² 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.

- misunderstood what she said about being outside Canada only to help a person in exchange for a place to stay

[33] The General Division makes an important factual error if it bases its decision on a factual finding it made by ignoring or misunderstanding **relevant** evidence.²³ Relevant means relevant to the legal tests the General Division had to apply.

[34] The Claimant and Commission didn't dispute she was outside Canada from March 29 to June 4, 2021.²⁴ So the General Division accepted that fact (paragraph 38). That's not a factual error.

[35] Then the General Division had to decide if the Claimant met an exception during that time. It had to consider evidence relevant to whether she was outside Canada:

- for a bona fide job interview,²⁵ or
- to conduct a bona fide job search²⁶

[36] The General Division correctly explained what bona fide means (paragraph 46).

[37] It reviewed the Claimant's evidence (paragraphs 39 and 40). Then it weighed her evidence and made its findings (paragraphs 41 to 47). And when it made those findings, it didn't ignore or misunderstand any relevant evidence.

[38] The General Division didn't find she was only outside Canada to help a person in exchange for lodging (her third argument, above). Although the General Division said she went for a different reason, it accepted that she was looking for work while in Florida (paragraphs 44 and 47). The most important findings were she wasn't in Florida to conduct a bona fide job search (paragraph 47). It based its decision on that finding.

²³ 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.

²⁴ See section 37(b) of the EI Act.

²⁵ See section 55(1)(e) of the EI Regulations.

²⁶ See section 55(1)(f) of the EI Regulations.

[39] So, the Claimant hasn't shown the General Division made an important factual error.

[40] I reviewed the documents from the General Division and the decision. I didn't find an arguable case the General Division ignored or misunderstood relevant evidence then based its decision on that mistake.

Conclusion

[41] The Claimant hasn't shown an arguable case the General Division made an error that might change the outcome in her appeal. And I didn't find an arguable case.

[42] This tells me her 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