



Citation: *QI v Canada Employment Insurance Commission*, 2025 SST 393

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: Q. I.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated April 4, 2025
(GE-25-634)

Tribunal member: Glenn Betteridge

Decision date: April 17, 2025

File number: AD-25-254

Decision

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

Overview

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

[3] The General Division decided it could not hear his appeal because he filed it too late. He had one year from when the Canada Employment Insurance Commission told him about its reconsideration decision.¹ The General Division found he missed that deadline.

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

Issue

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

I am not giving the Claimant permission to appeal

[6] 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 Then I made my decision.

[7] I can't consider the evidence (a video) the Claimant sent with his application to appeal.⁴ The Appeal Division can't consider new evidence unless it meets an exception to that rule. The Claimant sent the video to help prove an argument he made at the General Division. So, his evidence doesn't meet an exception.

[8] For the reasons that follow, I am not giving the Claimant permission to appeal.

¹ See section 52(2) of the *Department of Employment and Social Development Act* (DESD Act).

² See AD1.

³ See GD2 to GD12.

⁴ See AD1a.

The permission to appeal test screens out appeals that don't have a reasonable chance of success⁵

[9] I can give the Claimant permission to appeal if his appeal has a reasonable chance of success.⁶ This means he has to show an **arguable ground of appeal** upon which his appeal **might succeed**.⁷

[10] I can consider four grounds of appeal, which I call **errors**.⁸ 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

[11] The Claimant's reasons for appeal set out the key issues and central arguments I have to consider.⁹ Because the Claimant is representing himself, I will also look beyond his reasons when I apply the permission to appeal test.¹⁰

No arguable case the General Division made a jurisdictional error or a legal error

[12] When a claimant doesn't explain or give details about an alleged error, that ground of appeal has no reasonable chance of success.¹¹

⁵ See *Paradis v Canada (Attorney General)*, 2016 FC 1282 at paragraph 32.

⁶ See section 58(2) of the DESD Act.

⁷ See *Osaj v Canada (Attorney General)*, 2016 FC 115.

⁸ See section 58(1) of the DESD Act.

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 See *Twardowski v Canada (Attorney General)*, 2024 FC 1326 at paragraph 59.

[13] The Claimant checked the boxes that say the General Division made a jurisdictional error and a legal error.¹² But he doesn't explain or give examples of either error. This means he hasn't shown an arguable case of either error.

[14] I didn't find an arguable case the General Division made a jurisdictional error. The General Division correctly identified the issue it had to decide (see paragraph 5 of the decision). Then it decided only that issue.

[15] I didn't find an arguable case the General Division made a legal error. The General Division correctly stated the law it had to use to decide the Claimant's appeal (paragraphs 4 and 29). Then it used that law and made the findings it had to make to decide his appeal (paragraphs 15, 22, 24, 27, and 28). And its reasons are adequate.¹³

There isn't an arguable case the General Division made an important factual error

[16] 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.¹⁴ It's the General Division's job to review and weigh the evidence.¹⁵ I can't re-weigh the evidence or substitute my view of the facts.

[17] The Claimant checked the box that says the General Division made an important error of fact.¹⁶ But he doesn't point to an error the General Division made. He is basically rearguing his case at the Appeal Division, hoping for a different result than he got at the General Division. He seems to add evidence in response to General Division findings.¹⁷ But the Appeal Division process isn't a do-over based on more evidence. He

¹² See AD1-12.

¹³ 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.

¹⁴ 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.

¹⁵ See *Tracey v Canada (Attorney General)*, 2015 FC 1300 at paragraph 33.

¹⁶ See AD1-12.

¹⁷ See for example the evidence at paragraph 21 bullet 5, paragraph 25 bullet 2, and the General Division's finding in paragraph 24 the Commission communicated its decision in writing by January 31, 2024. In his application, the Claimant responds to these parts of the decision. He writes: "I am very sure

hasn't shown the General Division ignored or misunderstood any evidence when it made its decision.

[18] I reviewed the evidence in the General Division appeal file, then compared it to the General Division decision. I didn't find any relevant evidence the General Division ignored or misunderstood. The General Division set out the relevant evidence from the Commission and Claimant in detail (paragraphs 16 to 21). Then it weighed that evidence and made factual findings (paragraphs 22 to 28).

[19] The General Division paid attention to the Claimant's evidence his mail sometimes gets delivered to another building (paragraphs 21 and 26). And it didn't misunderstand that evidence.

Conclusion

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

[21] This tells me his 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