Citation: *RH v Canada Employment Insurance Commission*, 2025 SST 219

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	R. H.
Representative:	O. E.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated January 27, 2025 (GE-24-3642)

Tribunal member:	Glenn Betteridge
Decision date:	March 12, 2025
File number:	AD-25-156

Decision

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

Overview

[2] R. H. is the Claimant.

[3] She has asked for permission to appeal a General Division decision. The General Division decided she wasn't entitled to benefits because she didn't prove she was available for work in the summer of 2022.[1]

[4] Two sections of the *Employment Insurance Act* (EI Act) say that to get regular benefits a person has to prove they are actively looking for—and ready to accept—suitable work on an ongoing basis.[2]

[5] The Claimant argues the General Division made all four types of errors the law lets me consider.

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

Preliminary issue: I am extending the time for the Claimant to file her application

[7] The Claimant says she received the General Division decision on January 28, 2025.[3] The Tribunal considers that she received it the next day (January 29) because the Tribunal sent it by email.[4]

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[1] She received regular benefits for June 30 to September 2, 2022.
[2] See sections 18(1)(a) and 50(8) of the *Employment Insurance Act* (EI Act).
[3] See AD1-2.
[4] See section 22(3) of the *Social Security Tribunal Rules of Procedure* (SST Rules).

[8] This means the 30-day deadline to file her application to appeal was February 28, 2025. The Tribunal received stamp shows it received her application on March 3, 2025. I have no reason to doubt this.

[9] This evidence tells me the Claimant's appeal was late.

[10] I don't accept the Claimant's argument it wasn't late because her representative didn't see the email until February 1, 2025.[5] Under the Tribunal rules, she received it on January 29, 2025. That's when the 30 days started to run. It was her appeal, not her representative's appeal.

[11] The Claimant explained that her representative didn't see the Tribunal's email with the decision until February 1, 2025, because he said he was sick. This is a reasonable explanation in the circumstances.[6] The Claimant seems to rely on her representative to translate and explain documents to her.

[12] I am extending the time for the Claimant to file her application to March 3, 2025, the day she filed it.

[13] Next I will consider whether her appeal has a reasonable chance of success.

Issue

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

I am not giving the Claimant permission to appeal

[15] I read the Claimant's application to appeal.[7] I read the General Division decision. I reviewed the documents in the General Division file.[8] Then I made my decision.

[16] The Claimant had the burden of showing she was available for work in the summer of 2022. The General Division decided she didn't show that.

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[5] See AD1-5.
[6] See section 27 of the SST Rules.
[7] See AD1.
[8] See GD2 to GD9.

[17] It's unfortunate the Claimant chose an in writing process at the General Division. Availability for work is a **question of fact**. This means the General Division had to apply settled law to the facts in her case. If she had given sworn evidence, the Claimant might have added credible and reliable evidence to support her appeal.

[18] But the Claimant chose the type of hearing she wanted. She chose her representative. And it was up to her to give instructions to her representative.

[19] Although the General Division made mistakes in its decision, her appeal doesn't have a reasonable chance of success. For 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 success[9]

[20] I can give the Claimant permission to appeal if her appeal has a reasonable chance of success.[10] This means she has to show an **arguable ground of appeal** upon which her appeal **might succeed**.[11]

[21] I can consider four grounds of appeal, which I call **errors**.[12] 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

[22] The Claimant's reasons for appeal set out the key issues and central arguments I have to consider.[13] The Claimant argues the General Division made all four types of errors that the law lets me consider.

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[9] See *Paradis v Canada (Attorney General)*, 2016 FC 1282 at paragraph 32.
[10] See section 58(2) of the *Department of Employment and Social Development Act* (DESD Act).
[11] See *Osaj v Canada (Attorney General)*, 2016 FC 115.
[12] See section 58(1) of the DESD Act.
[13] See *Hazaparu v Canada (Attorney General)*, 2024 FC 928 at paragraph 13.

[23] When a claimant doesn't explain or give details about an alleged error, that ground of appeal has no reasonable chance of success.[14] The Claimant's arguments about jurisdictional and procedural fairness errors don't show an arguable case the General Division made an error. She didn't give details about these alleged errors.

The General Division's section 50(8) analysis is arguably wrong, but this doesn't give her appeal a reasonable chance of success

[24] Section 50(8) of the EI Act says the Commission **may require** a person to prove they are making reasonable and customary efforts to get suitable employment. This means when the Commission asks, the person has the burden of proving they are making reasonable and customary efforts.

[25] But the Appeal Division has said that before the Commission can refuse a person benefits under section 50(8) it has to ask them for proof of their job search efforts.[15] And the Commission has to tell the person what kinds of proof will satisfy its request. The Tribunal should consistently interpret the EI Act based on our expertise and the role given to us by Parliament.[16] The two Appeal Division decisions are well reasoned, and the General Division should follow them. In many cases, the General Division has followed them.[17]

[26] In the Claimant's appeal the General Division weighed the evidence and found that, "on the balance of probabilities, that the Commission didn't ask for job search information from the Appellant" (paragraph 45).

[27] So there's an arguable case the Claimant didn't have to prove she was available under section 50(8) and the Commission could not use that section to disentitle her. In other words, the Claimant's availability under this section wasn't an issue the General

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[14] See *Twardowski v Canada (Attorney General)*, 2024 FC 1326 at paragraph 59.
[15] See for example *TM v Canada Employment Insurance Commission*, 2021 SST 11; and *LD v Canada Employment Insurance Commission*, 2020 SST 688.
[16] See *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, at paragraphs 72, 111, and 129.
[17] See for example, *AA* v *Canada Employment Insurance Commission*, 2023 SST 895; *JF v Canada Employment Insurance Commission*, 2023 SST 1890; *MS v Canada Employment Insurance Commission*, 2024 SST 1353; *ZE* v *Canada Employment Insurance Commission*, 2022 SST 168; and *MG* v *Canada Employment Insurance Commission*, 2024 SST 1276.

Division had the power to decide. But the General Division went on to decide the issue. It decided the Commission hadn't proven the Claimant failed to make reasonable and customary efforts to find work (paragraph 46).

[28] Even if the General Division had the power to decide this issue, there is an arguable case it used the wrong legal test. It seems to have reversed the burden of proof when it wrote "the Commission hasn't proven" (paragraph 46). Under section 50(8), a claimant has to prove they were available.

[29] So there's an arguable case the General Division decided an issue it had no power to decide, or made a legal error when it reversed the burden of proof.

[30] But neither error gives the Claimant's appeal a reasonable chance of winning her appeal. The Claimant had to show she was available for work under section 18(1)(a) of the EI Act. The General Division found the Claimant didn't show she was available under that section. And as I will explain below, the General Division didn't base that finding on a legal error or an important factual error.

There isn't an arguable case the General Division made a legal error

[31] The Claimant checked the box that says the General Division made an error of law. She argues the General Division, "erred in law in refusing to accept the recognize the job search efforts that he clearly described at paragraph [34] as what the law requires to substantiate the effort."[18]

[32] I don't accept the Claimant's argument. The improper application of settled law to the facts is a mixed error of fact and law, not a legal error.[19] And the law doesn't let me give permission to appeal based on a mixed error.

[33] The General Division makes a legal error when it ignores an argument it has to consider, doesn't give adequate reasons for its decision, misinterprets a law, uses an incorrect legal test, or doesn't follow a court decision it has to follow.

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[18] See AD1-3.
[19] See *Quadir v Canada (Attorney General)*, 2018 FCA 21 at paragraph 9.

[34] The General Division didn't have to accept the Claimant's argument she met the legal test to show she was available. It set out the correct legal test for availability under section 18(1)(a) of the EI Act, based on the decided court cases it had to follow (paragraphs 24, 48, and 49). Then it used that test (paragraphs 50 to 76).

[35] So the Claimant hasn't shown there is an arguable case the General Division made a legal error.

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

[36] The Claimant checked the box that says the General Division made an important error of fact.

[37] 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.[20] Relevant means relevant in relation to the legal tests the General Division had to apply. The law also says I can presume the General Division reviewed all the evidence—it doesn't have to refer to every piece of evidence.[21]

– The Claimant's evidence doesn't count as sworn evidence, and the General Division can't force the Commission to disclose documents

[38] The Claimant argues the General Division ignored "sworn Affidavit testimony."[22] The Claimant's representative misunderstands what counts as an affidavit. What the representative calls "affidavits" are missing the formal sign-off by a person with legal authority.[23] There is no evidence the Claimant swore or affirmed her statements in the presence of a person who had that legal authority.

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[20] 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.
[21] See *Sibbald v Canada (Attorney General)*, 2022 FCA 157 at paragraph 46.
[22] See AD1-3.
[23] This is the information that makes up the "jurat" portion of an affidavit or sworn statement.

[39] The Claimant argues the General Division should have drawn a negative inference because the Commission didn't send a clear screen shot the email list, transcripts of phone calls, or faxes the Claimant says she sent.[24]

[40] The General Division didn't make an important factual (or legal) error by not drawing a negative inference. The General Division doesn't have to use the formal rules of evidence. It has no power to compel the Commission to disclose documents, assuming they exist, and the Commission has them. The General Division process was the Claimant's opportunity to present her full case. And it gave her a full and fair opportunity to do that, including sending her a letter asking her questions.[25] She responded in writing to that letter and later responded to the Commission's supplementary submissions.[26]

[41] Unfortunately for the Claimant, her written arguments focus on miscommunication and misunderstandings with the Commission. The General Division reviews the Commission's **decisions about benefits**. It doesn't supervise how the Commission manages or investigates claims. I appreciate the Claimant was frustrated by the miscommunication and misunderstanding. But the General Division didn't have the power to allow her appeal because of miscommunication or misunderstanding with the Commission.

– The General Division didn't ignore the Claimant's evidence about miscommunication with the Commission

[42] The Claimant argues the General Division ignored the Claimant's evidence about her contact with the Commission, the Commission's attempts to contact her by phone and email, and her attempt to fax the Commission her job search documents. She says this evidence shows two things. First, the Commission misrepresented evidence about the phone calls the officer's made. Second, the Commission didn't act judicially when it reconsidered her claim.

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[24] See the Claimant's reason 2 at AD1-3.
[25] See GD6.
[26] See GD9.

[43] The General Division considered the Commission explanation of why it reconsidered her claim, and its evidence to support that (paragraphs 14 and 29). It is the General Division's job to review and weigh the evidence.[27] I can't re-weigh the evidence or substitute my view of the facts or the credibility of the evidence.

[44] The General Division didn't ignore or misunderstand the Claimant's evidence about miscommunication with the Commission regarding her job search. It reviewed the Commission's evidence and her evidence (paragraph 34, and 41 to 43). It found the Commission didn't ask the Claimant for job search information and the Claimant didn't give any in August 2024 (paragraph 45).

– **The General Division didn't ignore or misunderstand the Claimant's evidence when it decided she didn't show she was available**

[45] The General Division didn't ignore or misunderstand the Claimant's evidence when it applied the section 18(1)(a) availability test.

[46] It reviewed the Claimant's and Commission's evidence about wanting to get back to work (paragraphs 52 to 56). Then it weighed the Claimant's evidence about in light of the Commission's evidence. It found the Claimant's evidence wasn't credible and gave its reasons (paragraphs 57 to 60).

[47] It reviewed the Claimant's evidence of her job search efforts (paragraphs 63 to 65).

[48] It reviewed the Claimant's evidence and Commission's argument about any personal restrictions on her availability (paragraphs 70, 71, and 73).

[49] It didn't matter whether the Commission had all of the Claimant's evidence when it decided she wasn't available. The General Division has the power to review the parties' evidence and make the decision the Commission should have made. And that's what it did, without ignoring or misunderstanding the Claimant's evidence. It didn't have

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

to accept her evidence or her arguments—it had to consider them, and that's what it did.

[50] This means there isn't an arguable case the General Division made an important factual error.

Conclusion

[51] 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.

[52] 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