Citation: *AB v Canada Employment Insurance Commission*, 2025 SST 413

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	A. B.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated March 18, 2025 (GE-25-385)

Tribunal member:	Elizabeth Usprich
Decision date:	April 24, 2025
File number:	AD-25-244

Decision

[1] Leave (permission) to appeal is refused. The appeal will not proceed.

Overview

[2] A. B. is the Applicant. He applied for Employment Insurance (EI) benefits on November 13, 2024. His last employment in Canada ended on December 27, 2023. So, the Applicant waited over 10 months to apply for EI benefits.

[3] The Canada Employment Insurance Commission (Commission) originally denied his claim because the Applicant didn't have enough hours in the qualifying period.[1] The Applicant asked the Commission to reconsider, and to see if he would qualify at an earlier date. This is known as antedating (backdating a claim).

[4] The Commission decided the Applicant would have had enough hours to qualify at an earlier date. But the Commission said the Applicant didn't have good cause for his delay in applying for EI benefits.[2] The Applicant appealed this decision to the Social Security Tribunal (Tribunal) General Division. The General Division also decided that the Applicant didn't show good cause for the entire period of his delay.

[5] The Applicant has asked for permission to appeal to the Appeal Division. I am denying the Applicant's request for permission to appeal because there is no reasonable chance of success.

Preliminary matters

[6] The Applicant submitted his Application to the Appeal Division on April 2, 2025. On April 10, 2025, he sent some additional information. Both of these were considered.

[1] See GD3-23 the Commission's Notice of Decision dated November 26, 2024.
[2] See GD3-49 the Commission's Notice of Decision dated January 24, 2025.

Issues

[7] The issues in this appeal are:

a) Is there an arguable case that the General Division didn't provide the Applicant with a fair process?

b) Is there an arguable case that the General Division made a reviewable error?

I am not giving the Applicant permission to appeal

[8] An appeal can only go ahead if the Appeal Division gives an applicant permission to appeal.[3] I have to be satisfied that the appeal has a reasonable chance of success.[4] There has to be an arguable ground upon which the appeal might succeed.[5]

[9] There are only certain grounds of appeal that the Appeal Division can consider.[6] Briefly, the Applicant has to show the General Division did one of the following:

- It acted unfairly in some way.
- It decided an issue it shouldn't have, or didn't decide an issue it should have. This is also called an error of jurisdiction.
- It made an error of law.
- It based its decision on an important error of fact.

[10] So, for the Applicant's appeal to go ahead, I have to find there is a reasonable chance of success on any of those grounds. The Applicant says the General Division had several procedural fairness errors. As well, the Applicant says his claim should be considered from a compassionate grounds standpoint.

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[3] See section 56(1) of the Department of *Employment and Social Development Act* (DESD Act).
[4] See section 58(2) of the DESD Act.
[5] See *Hazaparu v Canada (Attorney General)*, 2024 FC 928 at paragraph 13; *O'Rourke v Canada (Attorney General)*, 2018 FC 498; *Osaj v Canada (Attorney General)*, 2016 FC 115 at paragraph 12; and *Ingram v Canada (Attorney General)*, 2017 FC 259 at paragraph 16.
[6] See section 58(1) of the DESD Act. The grounds listed are also known as errors.

The General Division's process was fair

[11] A fair process is also called natural justice. These principles include making sure parties have a fair opportunity to present their case and have it decided by an impartial decision-maker. I can only look at an error that the **General Division** did, or didn't do.

– The General Division can ask the Commission about things that came up during the hearing

[12] The Applicant argues that the General Division was procedurally unfair because it asked the Commission to clarify some issues.[7] First, as the General Division said at the hearing,[8] and in its decision,[9] it was merely trying to explain the process to the Applicant. In other words, it acknowledged that it didn't have the jurisdiction to decide these issues. Second, the additional information would have had no bearing on the outcome of the case. The only issue before the General Division was whether the application for EI benefits could be antedated.

[13] No party is required to attend a hearing. The Tribunal can't, and doesn't, control which parties attend a hearing. In this case, the Commission chose to participate in the process by providing written representations.

[14] The Applicant says he feels the Hearing Member was acting for the Commission. Allegations of bias are very serious. Members are presumed to be impartial. The test for bias is whether a reasonably well-informed person would think, in the circumstances, that the member wouldn't decide the case fairly.[10] It isn't enough to show suspicion of bias. There needs to be actual evidence of bias. This means the legal test for showing a decision-maker is biased is high.[11] I have reviewed the recording. The Hearing Member was asking appropriate questions to try to understand the Applicant's position. There is no arguable case that the Hearing Member was biased.

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[7] See GD7 the General Division's request to the Commission about additional information.
[8] Listen to the General Division hearing recording at 00:48:49 and 00:52:45.
[9] See, for example, the General Division decision at paragraphs 23, 24, 29, 30, 34, and 37.
[10] See *Committee for Justice and Liberty et al. v National Energy Board et al.*, 1976 CanLII 2 (SCC), [1978] 1 SCR 369 at page 394.
[11] See *SM v Minister of Employment and Social Development*, 2015 SSTAD 1050 at paragraph 17.

[15] Natural justice applies to all parties. If something novel is raised at a hearing, the General Division can still ask for submissions about it.[12] Again, the General Division didn't have to ask these questions to decide the appeal. It was asking the Commission so the Applicant would have clarification. There is no arguable case that there is an error in this regard.

[16] The Applicant argues the General Division made another procedural error. He says the General Division assumed he was arguing that his reasons for leaving his job had been accepted by the Commission. Again, nothing turns on this. The General Division, correctly, made no decision about this. Yet, it's important to note that the Applicant said exactly this to the General Division. He says, "This means that my reasons for leaving work were already accepted as valid."[13] The Applicant also submitted a post-hearing email that says, "My Reasons for Leaving My Job Have Already Been Established."[14]

[17] It's easy to see why the General Division thought the Applicant might have been unclear about what the Commission had decided. But there is no arguable case this is a procedural error.

– **Incomplete evaluation by the Commission of the Applicant's file**

[18] The Applicant says the Commission didn't fully assess his claim.[15] This isn't an error the General Division made. That means the Appeal Division can't review it. There is nothing in the EI Act that requires the Commission to thoroughly assess a claimant's application for EI benefits and find every reason to decline a claim. Instead, the usual practice is once an error is found the Commission typically stops assessing the claim at that point. There is no arguable case the General Division made an error regarding this.

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[12] The concept of natural justice is fundamental and protects all parties. The duty of fairness is variable and must be applied on a case-by-case basis. See *Canada (Attorney General) v Mavi*, 2011 SCC 30 at paragraph 42. The list referred to in *Mavi* is from *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC) at paragraphs 23 to 28.
[13] Listen to the General Division hearing recording at 00:11:20.
[14] See GD11 the Applicant's post-hearing submission to the General Division.
[15] See AD1-8. the Applicant's Application for Appeal to the Appeal Division.

[19] The Applicant doesn't seem to understand that the reason he had for leaving his job hasn't been examined yet. He has again asked for the reason he left to be considered.[16] The choice to resign hasn't been considered as it isn't relevant at this time. The only thing the General Division was considering was whether the claim for benefits could be antedated.

– **It isn't a procedural fairness error, or any other error, that the type of hearing was incorrectly listed**

[20] The Applicant argues it's an error that the decision improperly says it proceeded by videoconference. Nothing turns on this. The Applicant says he was informed there were technical difficulties so he agreed to proceed by teleconference instead.[17]

[21] The Applicant says this was procedurally unfair. He says he felt pressured to proceed due to the urgency of his case. He acknowledges that he was offered an opportunity to adjourn the hearing to a new date.[18]

[22] The Applicant applied to the General Division on February 6, 2025. The hearing was held a mere 19 days from the date he applied to the General Division. If there was any urgency, it was created because he waited so long to apply for EI benefits. That doesn't mean the General Division was procedurally unfair in its process.

[23] Second, the Applicant didn't have to proceed by teleconference. He made the choice to do so. The General Division confirmed that this was the Applicant's choice at the beginning of the hearing.[19] If he changed his mind at any point during the hearing, he could also have said something. There is no arguable case that the General Division made a reviewable error regarding this.

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[16] See AD1A-2 the Applicant's supplementary reasons for his appeal to the Appeal Division.
[17] See AD1-8. the Applicant's Application for Appeal to the Appeal Division.
[18] See AD1-8. the Applicant's Application for Appeal to the Appeal Division.
[19] Listen to the General Division hearing recording at 00:02:18.

The General Division didn't make any other reviewable error

[24] Because the Applicant is self-represented, I reviewed the file, listened to the hearing recording, and looked at the decision the Applicant is appealing. I haven't found any reviewable error that the General Division may have made.[20]

– The General Division applied settled law to the facts of the case

[25] The General Division correctly stated the legal test.[21] The Applicant had to show good cause for the length of his delay in applying for EI benefits. To show good cause, the Applicant had to show he acted as a reasonable and prudent person in similar circumstances would have acted. The Applicant had to show that he took reasonably prompt steps to learn about his rights and obligations under the law. If he didn't, he had to show there were exceptional circumstances that prevented him from doing so.

[26] The Applicant feels his physical and mental health, and how they impacted his ability to make decisions, wasn't properly considered. Yet, the General Division mentioned these very issues multiple times in its decision.[22] The General Division acknowledged the issues and considered them in the decision.

[27] The General Division then had to apply the legal test. It thoroughly reviewed all the Applicant's testimony, along with any written submissions. The legal test was correct, and the Applicant hasn't said the General Division got any important facts wrong.

[28] An important error of fact happens when the General Division makes its decision based on an erroneous (wrong) finding of fact that was "made in a perverse or capricious manner or without regard for the material before it".[23] This means the General Division had to ignore, misunderstand or overlook the evidence in some way.

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[20] The Federal Court has said I must do this in decisions like *Griffin v Canada (Attorney General)*, 2016 FC 874 and *Karadeolian v Canada (Attorney General)*, 2016 FC 615.
[21] See the General Division decision at paragraphs 41 to 44. Listen to the General Division hearing recording at 00:05:31 to 00:08:03.
[22] See, for example, the General Division decision at paragraphs 49 (multiple times), 51, 73, and 74.
[23] See section 58(1)(c) of the DESD Act.

[29] The General Division doesn't have to mention every piece of evidence.[24] If the General Division made a finding that is "willfully going contrary to the evidence," or if crucial evidence were ignored, then I could intervene.[25]

[30] The General Division considered the Applicant's arguments. So, it can't be said that it overlooked, misunderstood, or ignored the Applicant's arguments. It seems the Applicant is attempting to reargue his case to the Appeal Division, with the hope of a different outcome. It isn't the role of the Appeal Division to reweigh the evidence that was before the General Division. There is no arguable case that the General Division made an important error of fact.

– **The Tribunal has no authority to grant EI benefits based on compassionate grounds**

[31] The Applicant is asking for his case to be reconsidered on compassionate grounds.[26] Unfortunately, there is no mechanism in the law that allows the Tribunal to do this. The Tribunal has a very specific task. It must decide whether a claimant is entitled to benefits under the EI Act. The Tribunal doesn't have the authority to rewrite the law or expand prescribed regulations.

[32] The Applicant is also asking for a compassionate decision that considers the undue hardship he has faced throughout this process. Again, that isn't within the law. As the General Division noted, the Supreme Court of Canada explains the law must be applied as written, even if it seems unfair.[27]

[33] It's settled law that a claimant has to take "reasonably prompt steps" to understand if they're entitled to benefits and ignorance of the law isn't an excuse. The Federal Court of Appeal (FCA) has held, "This obligation imports a duty of care that is

[24] See *Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319 at paragraph 39.
[25] See *Walls v Canada (Attorney General)*, 2022 FCA 47 at paragraph 41.
[26] See AD1-9 the Applicant's Application for Appeal to the Appeal Division. See also GD2-12 the Notice of Appeal to the General Division where the Applicant requested the same thing.
[27] See the General Division decision at paragraph 85 relying on *Granger v Canada (Canada Employment and Immigration Commission)*, [1989] 1 SCR 141.

both demanding and strict."[28] The FCA has also said, "This is why the 'good cause for delay' exception is cautiously applied."[29]

[34] The FCA says in *Smith*, "Mr. Smith made no attempt throughout the six-month period to submit a claim, and there appears to have been no circumstance which prevented him from doing so or which rendered **exceptionally difficult** the making of a claim at the outset rather than later on. True, the respondent consciously opted to seek new employment, rather than throw himself on the unemployment insurance system which he may have had a perfect right to do."[30] It later says, "such motives, pure as they were, do not on the present state of the law allow him to antedate his claim on the ground that he had 'good cause' for the delay in making it" (emphasis added).[31]

[35] The Applicant also says that the human dimension EI and the impact of the trade war issues in his employment sector should be considered. These arguments were never raised before the General Division. So, I can't find the General Division made an error when this was never raised. But even if the arguments had been raised, there is no aspect of settled antedate law that allows for these considerations.

[36] The General Division did what it was supposed to do. It applied settled law to the facts of the case. It thoroughly reviewed everything the Applicant raised. It weighed the evidence. The General Division's reasons for its decision are detailed and thorough.

[37] The Applicant's position doesn't appear to have changed. The role of the Appeal Division isn't to reweigh the evidence with the hope of a different outcome. The Appeal Division considers whether the General Division made any **reviewable** errors.[32] I don't have the authority to intervene on how the General Division weighed the evidence.

[38] The Applicant is again asking the Appeal Division to consider his personal and challenging circumstances. But the Appeal Division has a limited mandate. The Appeal

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[28] See *Canada (Attorney General) v Kaler*, 2011 FCA 266 at paragraph 4.
[29] See *Canada (Attorney General) v Brace*, 2008 FCA 118 at paragraph 7.
[30] See *Canada (Attorney General) v Smith*, A-549-92 (Federal Court of Appeal) (*Smith*).
[31] See *Canada (Attorney General) v Smith*, A-549-92 (Federal Court of Appeal).
[32] See *Uvaliyev v Canada (Attorney General)*, 2021 FCA 222 at paragraph 7; and *Sibbald v Canada (Attorney General)* 2022 FCA 157 at paragraph 27.

Division must find there was an error in the General Division's process or decision. In this case, I haven't found there is an arguable case that the General Division made a reviewable error.

Conclusion

[39] Permission to appeal is refused. This means that the appeal will not proceed.

Elizabeth Usprich
Member, Appeal Division