



Citation: *CB v Canada Employment Insurance Commission*, 2025 SST 419

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

**Applicant:** C. B.  
**Representative:** J. E.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated April 10, 2025  
(GE-24-3609)

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**Tribunal member:** Glenn Betteridge

**Decision date:** April 24, 2025

**File number:** AD-25-275

## Decision

[1] I am not giving leave (permission) to appeal the General Division decision. The appeal won't go forward.

## Overview

[2] C. 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.

[3] This is the second time this case has come to the Appeal Division. Last time I found the General Division made an error. So I sent the case back to the General Division for a different member to decide one issue.<sup>1</sup>

[4] Under section 18(1)(a) of the *Employment Insurance Act*, to get benefits a person has to show they are capable and **available for work** but unable to find suitable employment.

[5] The General Division decided the Claimant didn't show she was available for work while in high school full time (September 6, 2021 to June 23, 2022). This meant she could not get benefits. So she has to pay back an overpayment.

[6] The Claimant gives the following reason for appealing the General Division decision: "Don't agree with the decision on saying she was not available for work."<sup>2</sup>

[7] Unfortunately, the Claimant's appeal doesn't have a reasonable chance of success. This means I can't give her permission to appeal.

## Issue

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

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<sup>1</sup> See the decisions in GE-24-907 and AD-24-500.

<sup>2</sup> See ADN1-2.

## I am not giving the Claimant permission to appeal

[9] I read the Claimant's application to appeal.<sup>3</sup> I read the General Division decision. I reviewed the documents in the General Division file.<sup>4</sup> I listened to the first General Division hearing.<sup>5</sup> Then I made my decision.

[10] 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<sup>6</sup>

[11] I can give the Claimant permission to appeal if her appeal has a reasonable chance of success.<sup>7</sup> This means she has to show an **arguable ground of appeal** upon which her appeal **might succeed**.<sup>8</sup>

[12] I can consider four grounds of appeal, which I call **errors**.<sup>9</sup> 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

[13] The Claimant's reasons for appeal set out the key issues and central arguments I have to consider.<sup>10</sup> Because the Claimant is represented by someone without legal

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<sup>3</sup> See ADN1.

<sup>4</sup> See GD2, GD3, GD4, RGD2, and RGD3.

<sup>5</sup> The first hearing lasted approximately 1 hour and 23 minutes. The Claimant didn't testify at the second hearing, so I didn't need to listen to that hearing since there was no additional relevant evidence about her availability while in school.

<sup>6</sup> See *Paradis v Canada (Attorney General)*, 2016 FC 1282 at paragraph 32.

<sup>7</sup> See section 58(2) of the *Department of Employment and Social Development Act* (DESD Act).

<sup>8</sup> See *Osaj v Canada (Attorney General)*, 2016 FC 115.

<sup>9</sup> See section 58(1) of the DESD Act.

<sup>10</sup> See *Hazaparu v Canada (Attorney General)*, 2024 FC 928 at paragraph 13.

training, I will also look beyond her arguments when I apply the permission to appeal test.<sup>11</sup>

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

[14] The Claimant checked the box that says the General Division made a procedural fairness error. Then she writes that she disagrees with the decision—in one sentence, which I set out above. She hasn't given any reasons why the process was unfair. I think the Claimant is arguing the General Division decision is unfair.

[15] The Claimant hasn't shown an arguable case the General Division made a procedural fairness error. The law says when a claimant doesn't explain or give details about an alleged error, that ground of appeal has no reasonable chance of success.<sup>12</sup> And simply disagreeing with the General Division's findings, or the outcome of the appeal, doesn't show an arguable case the General Division made an error.<sup>13</sup>

[16] I reviewed the evidence that was before the General Division both times it heard the case. And I compared that evidence with the General Division decision. The General Division reviewed and weighed the evidence about her availability while in school (paragraphs 22, 25, 27, 28, 31, 33 to 36, 40, 42, 43, and 46). I didn't find any relevant evidence the General Division ignored or misunderstood when it made its findings of fact. In other words, the relevant evidence supports the General Division decision.

[17] This shows me there isn't an arguable case the General Division made an important factual error.

[18] And there isn't an arguable case the General Division made a legal error. It set out the law it had to use to decide whether the Claimant was available while in school

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<sup>11</sup> 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.

<sup>12</sup> See *Twardowski v Canada (Attorney General)*, 2024 FC 1326 at paragraph 59.

<sup>13</sup> See *Griffin v Canada (Attorney General)*, 2016 FC 874 at paragraph 20.

full time—the presumption of unavailability and the *Faucher* test (paragraphs 17 to 20, and 23). Then it used that law. And the General Division's reasons are adequate.

## **Conclusion**

[19] 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.

[20] 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