Citation: *DG v Canada Employment Insurance Commission*, 2025 SST 481

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	D. G.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated April 15, 2025 (GE-25-791)

Tribunal member:	Solange Losier
Decision date:	May 8, 2025
File number:	AD-25-293

Decision

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

Overview

[2] D. G. is the Claimant. She applied for Employment Insurance sickness benefits (benefits) on August 28, 2024. She asked the Commission to antedate her application.

[3] The Canada Employment Insurance Commission (Commission) decided that the Claimant couldn't get benefits for the period she was outside of Canada because she didn't meet any of the exceptions in law. It also decided that the medical certificate she submitted was not acceptable. And it found that her application couldn't be antedated because she didn't have enough hours at the earlier date.[1]

[4] Before the General Division, the Commission conceded the antedate and hours issue because they agreed that the Claimant had enough hours to establish a benefit period for benefits.[2]

[5] The General Division accepted the Claimant's medical certificate but decided that she wasn't entitled to get benefits for the period of time she was outside of Canada. It found that she hadn't shown the medical treatment she got abroad wasn't "readily or immediately available in Canada".[3]

[6] The Claimant is now asking for permission to appeal. She argues that the General Division made important errors of fact.[4]

[7] I am denying permission to appeal because the Claimant's appeal has no reasonable chance of success.[5]

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[1] See Commission's initial and reconsideration decision at pages GD3-26 to GD3-27 and GD3-43 to GD3-44.
[2] See pages GD4-4 to GD4-5.
[3] See General Division decision at pages AD1A-1 to AD1A-8.
[4] See Application to the Appeal Division at pages AD1-1 to AD1-8.
[5] See section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

Issues

[8] Is there an arguable case that the General Division made important errors of fact when it decided that the Claimant wasn't entitled to get benefits while outside of Canada?

Analysis

[9] An appeal can only proceed if the Appeal Division gives permission to appeal.[6] I must be satisfied that the appeal has a reasonable chance of success.[7] This means that there must be some arguable ground that the appeal might succeed.[8]

[10] I can only consider certain types of errors. I have to focus on whether the General Division could have made one or more of the relevant errors (this is called the "grounds of appeal").

[11] The possible grounds of appeal to the Appeal Division are that the General Division did one of the following:[9]

- proceeded in a way that was unfair
- acted beyond its powers or refused to exercise those powers
- made an error in law
- based its decision on an important error of fact.

[12] The Claimant in this case argues that the General Division made important errors of fact, so that's what I will focus on.[10] I will start first by summarizing the relevant law for these types of cases.

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[6] See section 56(1) of the DESD Act.
[7] See section 58(2) of the DESD Act.
[8] See *Osaj v Canada (Attorney General)*, 2016 FC 115, at paragraph 12.
[9] See section 58(1) of the DESD Act.
[10] See page AD1-4.

The law says that you can't get benefits while outside of Canada unless you meet one of the exceptions

[13] The law says that benefits aren't payable to people while they're outside Canada.[11] There are some exceptions that allow a person to get benefits if their travel is for a purpose that the law allows.[12]

[14] One of the exceptions is for the purpose of undergoing, at a hospital, medical or similar facility outside Canada, medical treatment that is not readily or immediately available in the claimant's area of residence in Canada, if the hospital, clinic, or facility is accredited to provide the medical treatment by the appropriate governmental authority outside of Canada.[13] I'll refer to this as the "medical treatment exception" in my decision.

[15] And if the Claimant met the medical treatment exception, she would also have to show she was otherwise available for work, but for her illness.[14]

[16] In order to prove that the Claimant was unable to work because of illness (or injury, or quarantine), she had to provide the Commission with a medical certificate completed by a medical doctor or other medical professional attesting to her inability to work and stating the probable duration.[15]

I am not giving the Claimant permission to appeal because it has no reasonable chance of success

[17] An error of fact happens when the General Division bases its decision on an erroneous finding of fact made "in a perverse or capricious manner or without regard for the material before it."[16]

[18] The Claimant argues that the General Division made important errors of fact. She says that she made "points at the hearing" that were misunderstood or not conveyed and would like her case reviewed.[17]

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[11] See section 37 of the *Employment Insurance Act* (EI Act).
[12] See section 55(1) of the *Employment Insurance Regulations* (EI Regulations).
[13] See section 55(1)(a) of the EI Regulations.
[14] See section 18(1)(b) of the EI Act.
[15] See section 40(1) of the EI Regulations.
[16] See section 58(1)(c) of the DESD Act.
[17] See page AD1-4.

[19] The Claimant restates that the fertility clinic said they could only start her in vitro fertilization (IVF) after 12 months. She asked them to start earlier, but there was no positive answer. And it was her gynecologist that suggested she get IVF.

There's no arguable case that the General Division made important errors of fact

[20] I listened to the audio recording of the General Division hearing. I see no arguable case that the General Division made important errors of fact or misunderstood any of the Claimant's evidence.

[21] The General Division found the Claimant was outside of Canada from January 28, 2024, and returned on January 22, 2025.[18] It found that the Claimant went abroad to get IVF.

[22] The General Division considered whether the medical treatment exception applied but concluded that she hadn't shown that IVF wasn't readily or immediately available in Canada.[19] It explained that sometimes medical treatment is not available right away, but that you have to wait.[20]

[23] It accepted that it would take 12–15 months to get IVF in Canada, but again it wasn't persuaded that "speedy access" to IVF was medically necessary, or that waiting to access IVF in Canada would have affected the success of the procedure.[21] Instead, it found that it was the Claimant's choice and preference to go abroad for IVF.[22]

[24] In its decision, the General Division gave weight to the Claimant's initial statement that she left Canada because IVF was cheaper abroad, and her mother was also there.[23]

[25] The audio recording of the General Division hearing confirms that neither the Claimant nor her husband asked the doctor if she could start the IVF earlier than

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[18] See paragraphs 2–3 and 16 of the General Division decision.
[19] See paragraphs 12–14, 30 of the General Division decision.
[20] See paragraph 13 of the General Division decision.
[21] See paragraphs 26–27 of the General Division decision.
[22] See paragraphs 26–28 of the General Division decision.
[23] See paragraph 29 of the General Division decision.

12-15 months.[24] So, the General Division didn't misunderstand this evidence when it wrote that "they didn't ask if they could start IVF sooner" in its decision.[25]

[26] Finally, the General Division accepted the Claimant's medical report and EI medical certificate.[26] It found that both documents were on official letterhead, signed and stamped by doctors. It explained the law doesn't require evidence that the doctor signing certificate had to be a "Canadian or American doctor."[27]

[27] The General Division understood the Claimant's arguments, but it didn't agree that IVF wasn't readily or immediately available in Canada. It explained with reasons why it made the findings it did. It was entitled to prefer her initial statements.

[28] The Claimant might disagree with the outcome of the General Division decision, but that isn't a reviewable error. An appeal to the Appeal Division is not a new hearing. I can't reweigh the evidence in order to get a different conclusion that is more favourable for the Claimant.[28]

[29] There is no arguable case that the General Division made important errors of fact. Its key findings are consistent with the evidence. I am satisfied that the General Division didn't misinterpret or fail to consider any relevant evidence.[29]

Conclusion

[30] Permission to appeal is refused. This means that the Claimant's appeal will not proceed. It has no reasonable chance of success.

Solange Losier
Member, Appeal Division

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[24] Listen to the audio recording of the General Division hearing at 33:10 to 36:04.
[25] See paragraph 16 of the General Division decision.
[26] See medical note at page GD3-20 and EI medical certificate at page GD3-21.
[27] See paragraphs 18 and 31–36 of the General Division decision and section 40(1) of the EI Regulations.
[28] See *Garvey v Canada (Attorney General),* 2018 FCA 118, at paragraph 11.
[29] See *Karadeolian v Canada (Attorney General)*, 2016 FC 165, at paragraph 10, which recommends doing such a review.