



Citation: *MS v Canada Employment Insurance Commission*, 2025 SST 487

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

# **Leave to Appeal Decision**

**Applicant:** M. S.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated April 3, 2025  
(GE-25-941)

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**Tribunal member:** Stephen Bergen

**Decision date:** **May 8, 2025**

**File number:** AD-25-323

## **Decision**

[1] I am refusing leave (permission) to appeal. The appeal will not proceed.

## **Overview**

[2] M. S. is the Applicant. I will call him the Claimant because this application is about his claim for Employment Insurance (EI) benefits. The Respondent is the Canada Employment Insurance Commission, which I will call the Commission.

[3] The Claimant's partner had a baby on January 10, 2024. She claimed maternity EI benefits as well as 35 weeks of regular parental EI benefits. Just over a year later, the Claimant took a parental leave from his employment. He applied to claim the remaining five weeks of the 40 weeks of parental benefits that may be shared between parents. The Commission refused to pay him any parental benefits because his parental leave started more than 52 weeks from the birth of his child.

[4] The Claimant asked the Commission to reconsider, but it would not change his decision. His appeal to the General Division of the Social Security Tribunal was also dismissed. Now he is asking the Appeal division for permission to appeal.

[5] I am refusing permission to appeal. There is no arguable case that the General Division made a procedural fairness error or an error of law.

## **Issues**

[6] Is there an arguable case that the General Division either acted unfairly or made an error of law when it failed to properly consider how he acted in reliance on the Commission's misinformation?

## **I am not giving the Claimant permission to appeal**

### **General Principles**

[7] For the Claimant's application for leave to appeal to succeed, his reasons for appealing would have to fit within the "grounds of appeal." The grounds of appeal identify the kinds of errors that I can consider.

[8] I may consider only the following errors:

- a) The General Division hearing process was not fair in some way.
- b) The General Division did not decide an issue that it should have decided. Or, it decided something it did not have the power to decide (error of jurisdiction).
- c) The General Division based its decision on an important error of fact.
- d) The General Division made an error of law when making its decision.<sup>1</sup>

[9] To grant this application for leave and permit the appeal process to move forward, I must find that there is a reasonable chance of success on one or more grounds of appeal. Other court decisions have equated a reasonable chance of success to an "arguable case."<sup>2</sup>

### **Procedural fairness**

[10] There is no arguable case that the General Division acted in a way that was procedurally unfair.

[11] The General Division considered the Commission's conduct. It understood the Claimant's argument that he relied on incorrect information from the Commission. It understood that the Claimant was only informed he would not get parental benefits after he had committed to taking leave.<sup>3</sup>

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<sup>1</sup> This is a plain-language version of the grounds of appeal. The full text is in section 58(1) of the *Department of Employment and Social Development Act* (DESDA).

<sup>2</sup> See *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; and *Ingram v Canada (Attorney General)*, 2017 FC 259.

<sup>3</sup> See paras 6 and 16 of the General Division decision.

[12] However, the General Division did not accept that the Claimant's circumstances meant that he was entitled to parental benefits.

[13] The Claimant believes the Commission process treated him unfairly. He seems to be arguing that the General Division process was also an unfair process, because it has not given him the remedy he is seeking.

[14] However, he is really disagreeing with the General Division's findings and the decision result, and not the process by which the General Division reached its decision. Procedural fairness is not concerned with whether a party feels that the decision result is fair.

[15] A "procedural fairness" error is concerned with the fairness of the process. Parties before the General Division have a right to certain procedural protections such as the right to be heard and to know the case against them, and the right to an unbiased decision-maker. This is what is known as "procedural fairness."

[16] The Claimant did not say that he did not have a fair chance to present his case at his hearing, or to respond to the Commission's case. He has not complained that the General Division member was biased or that he had already prejudged the matter.

[17] When I read the decision and review the appeal record, I do not see that the General Division did anything, or failed to do anything, that causes me to question the fairness of the process.

## **Error of law**

[18] The Claimant has also argued that the General Division's failure to take into account how he was misled by the Commission is an error of law. He says that the General Division "failed to apply legal principles regarding procedural fairness, administrative fairness, and detrimental reliance."<sup>4</sup>

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<sup>4</sup> See the Claimant's application at AD1-7.

[19] In support of his argument, the Claimant cites decisions of the Supreme Court of Canada for two broad principles. He says that *Knight v Indian Head School Division No. 19* states that procedural fairness applies to administrative decisions. And he says administrative decisions impacting an individual's rights must be made fairly and reasonably according to *Dunsmuir v New Brunswick*.<sup>5</sup>

[20] Neither of these points is controversial. However, the General Division's decision does not violate *Knight*. I have already found that there is no arguable case that the General Division process was procedurally unfair.

[21] As to the *Dunsmuir* decision and the Claimant's point that administrative decisions must be fair and reasonable, I have no authority to assess whether the General Division's findings or decision were "fair and reasonable."<sup>6</sup>

[22] If my decision were judicially reviewed, the court would be empowered to assess whether my decision was reasonable. However, I do not have the same power when I review the General Division decision. I cannot consider whether the General Division decision was reasonable, and I cannot find that it made an error of law because some aspect of its decision was "unreasonable."

[23] The Claimant also referred to three decisions of the former Umpire.

[24] The Claimant cited CUB 45025 for the notion that the Tribunal must weigh all relevant evidence impartially.<sup>7</sup> This is certainly true. However, he did not point to any evidence that the General Division ignored or overlooked, and he has not said that the member gave him reason to believe she was not impartial.

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<sup>5</sup> See the Claimant's application at AD1-9.

<sup>6</sup> I have the power to consider whether the decision is based on a "perverse or capricious" finding of fact. However, the Claimant has not asserted that the General Division made an error of fact or made an argument that any of its findings of fact were contrary to the evidence or without an evidentiary foundation.

<sup>7</sup> CUB decisions (Canadian Umpire Benefit decisions) are the reported decisions of the Umpire, the final level of administrative appeal under the former EI appeal scheme. They may be persuasive but, unlike decisions of the federal courts, they are not binding on the Appeal Division.

[25] He also cited the Umpire's decision CUB 45241, and the Federal Court of Appeal decision that upheld it. These decisions are not relevant to this appeal.<sup>8</sup> They do not stand for the principle that a claimant must not experience any kind of detrimental effect as a consequence of their reliance on "government-provided misinformation." They concern the specific penalties found in the *Employment Insurance Act (EI Act)* for making false statements. The Court confirmed that the Commission has the onus of proving that a claimant has made such a statement.

[26] CUB 60871 is another case dealing with penalties for misrepresentation. The decision says that it is not enough for a decision-maker to simply say a claimant's evidence is not credible. They must explain why they are rejecting the evidence.

[27] In this case, the General Division did not make an adverse finding on the Claimant's credibility or reject his evidence, and its decision did not depend on how it weighed the evidence.<sup>9</sup> Instead, it based its decision on what the law says.

[28] The EI Act says that standard parental benefits may only be paid within a 52 - week window from the birth of the child, unless certain conditions are met for extending that window.<sup>10</sup> None of the conditions applied to the Claimant, so the Claimant was not entitled to parental benefits outside the window.

[29] This means that the Claimant would not be entitled to the five weeks of parental benefits he claimed. This remains true irrespective of whether the Commission gave him incorrect information, failed to give him information, or failed to give him correct information in a timely manner. It is true despite the fact that the Claimant is not at fault, and it would still be true even though the refusal to pay benefits caused him financial hardship.<sup>11</sup>

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<sup>8</sup> See *Canada (Attorney General) v. Insalaco*, A-547-99.

<sup>9</sup> See para 17 of the General Division decision.

<sup>10</sup> See section 23(2)(b) of the EI Act. Conditions for extensions are set out in subsection 23(3) and following subsections.

<sup>11</sup> See the decisions in *Canada (Attorney General) v. Buors*, 2002 FCA 372; *Canada (Attorney General) v. Shaw*, 2002 FCA 325; *Molchan v. Canada (Attorney General)*, 2024 FCA 46; *Puig v. Canada (Attorney General)*, 2024 FCA 48.

[30] The Commission was not authorized by the EI Act to pay parental benefits to the Claimant. And the General Division was not empowered to relieve the Claimant of the operation of the EI Act, even if it would have been more equitable to do so. There is no arguable case that the General Division made an error of law by upholding the law.

[31] The Claimant's appeal has no reasonable chance of success.

## **Conclusion**

[32] I am refusing permission to appeal. This means that the appeal will not proceed.

Stephen Bergen  
Member, Appeal Division