Citation: *OD v Canada Employment Insurance Commission*, 2025 SST 756

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

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

Decision under appeal:	General Division decision dated July 7, 2025 (GE-25-1869)

Tribunal member:	Solange Losier
Decision date:	July 23, 2025
File number:	AD-25-488

Decision

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

Overview

[2] O. D. is the Claimant. He applied for Employment Insurance benefits (EI benefits) after he stopped working.

[3] The Canada Employment Insurance Commission (Commission) decided that he couldn't get EI benefits because he voluntarily left his job without just cause. It also decided that he hadn't proven his availability for work.[1]

[4] The General Division concluded the same and dismissed the Claimant's appeal.[2]

[5] The Claimant is now asking for permission to appeal. He says that the General Division made errors of law and important errors of fact.[3]

[6] I am denying the Claimant's request for permission to appeal because it has no reasonable chance of success.[4]

Preliminary matters

– **The Claimant submitted new evidence**

[7] New evidence is evidence that the General Division didn't have before it when it made its decision. The Appeal Division generally doesn't accept new evidence.[5] This is because the Appeal Division isn't the fact finder or rehearing the case. It's a review of the General Division's decision based on the same evidence.[6]

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[1] See Commission's decisions at pages GD3-29 to GD3-30 and GD3-56 to GD3-57.
[2] See General Division decision at pages AD1A-1 to AD1A-12.
[3] See Application to the Appeal Division at pages AD1-1 to AD1-24.
[4] See section 58(2) of the *Department of Employment and Social Development Act* (DESD Act).
[5] See *Tracey v Canada (Attorney General),* 2015 FC 1300 at paragraphs 29 and 34;*Parchment v Canada (Attorney General),* 2017 FC 354 at paragraph 23.
[6] See *Gittens v Canada (Attorney General),* 2019 FCA 256 at paragraph 13.

[8] There are some exceptions where new evidence is allowed.[7] For example, I can accept new evidence if it provides one of the following:

- general background information only
- if it highlights findings made without supporting evidence
- shows that the Tribunal acted unfairly.

[9] The Claimant submitted a screenshot from his school portal to support his argument that he had just cause and had no reasonable alternatives to leaving his job. He argues that this evidence is important because it proves that he was in a compressed school program of six back-to-back intensive terms.[8] He acknowledges that the document was not previously available and wasn't before the General Division.

[10] I find that the Claimant's submission (screenshot from his school portal) is new evidence that was not before the General Division. I acknowledge that the Claimant wants to provide additional information, but it is new evidence. An appeal to the Appeal Division isn't a "redo" based on updated evidence of the hearings before the General Division.

[11] I am not accepting the Claimant's new evidence because it isn't general background information, it doesn't highlight findings made without supporting evidence and doesn't show the Tribunal acted unfairly. So, it doesn't meet any of the exceptions. This means that I can't consider the Claimant's new evidence when making my decision.

[12] I note that there is a timetable of the Claimant's school schedule in the record. That evidence was before the General Division. It shows that his first academic term was starting in January 2025 and would end in December 2026.[9]

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[7] See *Sharma* v *Canada (Attorney General),* 2018 FCA 48 and *Sibbald v Canada (Attorney General),* 2022 FCA 157 at paragraphs 37–39.
[8] See pages AD1-22 and AD1-24.
[9] See pages GD3-48 to GD3-49.

Issue

[13] Is there an arguable case that the General Division made any errors of law and/or errors of fact when it decided the voluntary leave issue and availability issue?

Analysis

[14] An appeal can proceed only if the Appeal Division gives permission to appeal.[10] I must be satisfied that the appeal has a reasonable chance of success.[11] This means that there must be some arguable ground that the appeal might succeed.[12]

[15] The possible grounds of appeal to the Appeal Division are that the General Division:[13]

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

[16] The Claimant argues that the General Division made errors of law and important errors of fact, so that's what I will focus on.

I am not giving the Claimant permission to appeal

– The Claimant argues that the General Division made errors of law and important errors of fact

[17] The Claimant says that the General Division erred in law in its interpretation of voluntary leave under section 29(c) of the *Employment Insurance Act* (EI Act). He says that the General Division focused on isolated alternatives such as seeking a medical leave and postponing education.

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[10] See subsection 56(1) of the DESD Act.
[11] See section 58(2) of the DESD Act.
[12] See *Osaj v Canada (Attorney General),* 2016 FC 115.
[13] See section 58(1) of the DESD Act.

[18] He also argues that the General Division misapplied the presumption of non-availability and applied it too rigidly. He says that the General Division decision was inconsistent with binding decisions from the Federal Court of Appeal (FCA).

[19] The Claimant also argues that the General Division erred in fact because it "based its decision on serious errors of fact without regard for material evidence." He argues that the screenshot from the college portal is important (but I already decided that this was new evidence, and I didn't accept it).

[20] To support his position, he relied on the following case law:

- *White v Canada (Attorney General),* 2011 FCA 190[14]
- *Canada (Attorney General) v Laughland*, 2003 FCA 129
- *Landry v Canada (Attorney General), 2008 FCA 6*
- *Page v Canada (Attorney General), 2023 FCA 169*

– **There is no arguable case that the General Division made any errors of law or any important errors of fact**

[21] An error of law can happen when the General Division doesn't apply the correct law or when it uses the correct law but misunderstands what it means or how to apply it.[15]

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

[23] There were two legal issues under appeal.[17]

[14] The Claimant incorrectly cited this case at page AD1-20. The correct citation is found at paragraph 31 of this decision.
[15] See section 58(1)(b) of the DESD Act.
[16] See section 58(1)(c) of the DESD Act.
[17] See Commission's decisions at pages GD3-29 to GD3-30 and GD3-56 to GD3-57.

[24] First, the General Division had to decide whether the Claimant had voluntarily left his job without just cause (this resulted in a disqualification to benefits).[18] Second, the General Division had to decide whether the Claimant had proven he was capable of and available for work but was unable to find a suitable job (this resulted in a disentitlement to benefits).[19] It had to decide whether the Claimant had made reasonable and customary efforts to find a suitable job.

[25] The law says that a person has just cause for voluntarily leaving their job if, having regard to all the circumstances, they had no reasonable alternative to quitting.[20]

[26] A person who wants to receive regular benefits has to show that they're capable of and available for work but aren't able to find a suitable job.[21] As well, they have to prove that their efforts to find a job were reasonable and customary.[22]

[27] The law doesn't define what it means when it says "available." The FCA in a decision called *Faucher v Canada Employment and Immigration Commission* has provided some guidance when assessing a person's availability for work (i.e., there are three factors to consider, these are often referred to as the "Faucher" factors).[23]

[28] The General Division correctly stated the law for voluntary leave and the availability issue in its decision.[24]

[29] It referred to the FCA's decision in *Page v Canada (Attorney General).* The *Page* decision says that a contextual analysis is required when assessing whether a person has rebutted the presumption of non-availability.[25]

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[18] See section 30(1) of the *Employment Insurance Act* (EI Act).
[19] See sections 18(1)(a) and 50(8) of the EI Act.
[20] See section 29(c) of the EI Act.
[21] See section 18(1)(a) of the EI Act.
[22] See section 50(8) of the EI Act.
[23] See *Faucher* v *Canada Employment and Immigration Commission*, A-56-96 and A-57-96.
[24] See paragraphs 17—22; 27, 38–40; 42–44; 52–54; 59–60; 62–63 and 66 of the General Division decision.
[25] See *Page v Canada (Attorney General),* 2023 FCA 169 and paragraph 46 of the General Division decision.

[30] The General Division's decision shows that it considered the Claimant's specific circumstances and context. It gave weight to the Claimant's admission that it was "absolutely impossible to attend school and work." It concluded that he hadn't rebutted the presumption of non-availability. [26]

[31] The General Division then reviewed all three *Faucher* factors set out in the case law. It found that the Claimant hadn't shown he was available for work while attending school, that he hadn't made any efforts to find a suitable job and that he set personal conditions limiting his chances of going back to work. It also determined that he hadn't made any reasonable and customary efforts to find work.[27] So, he was disentitled from getting benefits.

[32] The General Division also correctly cited and applied the FCA decision in *Canada (Attorney General) v White,* noting that it had to consider all the circumstances.[28] That is exactly what the General Division did. It looked at all of the Claimant's circumstances. It didn't ignore any of his circumstances.

[33] The Claimant also relies on *Canada (Attorney General) v Laughland* decision. That decision says that "good cause" isn't the same as having "just cause."[29] The General Division didn't cite that specific decision, but it identified the same proposition from another case called *Imran v Canada (Attorney General),* 2008 FCA 17.[30]

[34] I couldn't find the "*Landry v Canada (Attorney General), 2008 FCA 6"* decision as cited by the Claimant. But I did find another case with the name "Landry" involving voluntary leave and EI benefits. The facts in that case were different, so it wasn't helpful.[31]

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[26] See paragraphs 47, 49–50 of the General Division decision.
[27] See paragraphs 56–58 of the General Division decision.
[28] See *Canada (Attorney General) v White*, 2011 FCA 190 and paragraphs 18–19 of the General Division decision.
[29] See *Canada (Attorney General) v Laughland*, 2003 FCA 129.
[30] See paragraph 36 of the General Division decision.
[31] See *Canada (Attorney General) v Landry*, A-1210-92. It was about a person who left their job to move with a friend with the intention to get married later.

[35] The General Division also decided that the Claimant had voluntarily left his job on December 31, 2024. The Claimant did not dispute this.[32]

[36] It considered the Claimant's reasons for leaving his job and looked at whether his working conditions constituted a danger to his health.[33] It determined that his work schedule wasn't a danger to his health, but rather that he left his job to attend a full-time school program starting January 6, 2025.[34]

[37] The General Division found that the Claimant had reasonable alternatives to leaving his job. It said that he could have postponed his school program and asked his employer about taking a medical leave of absence or inquired about the availability of sickness benefits.[35] It found that he could have continued working instead of attending school.[36] Finally, it concluded that he didn't have just cause to leave his job. It said there were reasonable alternatives. So, he was disqualified from getting benefits.[37]

[38] I see no arguable case that the General Division erred in law.[38] It correctly stated and applied the relevant provisions for each legal issue. It didn't misapply or misinterpret the law. Its decision was consistent with the jurisprudence on voluntary leave and availability for work.

[39] Many of the Claimant's arguments to the Appeal Division are focused on the fact that he was starting a full-time program and that it was impossible to work while he was in school. However, in order to get EI *regular* benefits, he has the onus of proving that he was capable of and available for work and unable to find suitable employment. He also has the onus of proving that he had just cause for voluntarily leaving his job.

[40] The General Division is the trier of fact, and was free to weigh the evidence and conclude that he didn't have just cause to leave his job and that he wasn't available for

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[32] See paragraph 15 of the General Division decision.
[33] See paragraphs 22–26 of the General Division decision and section 29(c)(iv) of the EI Act.
[34] See paragraph 25 of the General Division decision.
[35] See paragraph 31 of the General Division decision.
[36] See paragraph 32 of the General Division decision.
[37] See paragraphs 71–72 of the General Division decision.
[38] See section 58(1)(b) of the DESD Act.

work. It doesn't matter that his school program was 2 years (6 terms) in light of his admission that he wasn't looking or available for work. His health issues were deemed not to amount to just cause.

[41] The Claimant's arguments amount to a disagreement with the General Division's decision and outcome. But I can't reweigh the evidence in order to get a different conclusion that is more favourable for the Claimant.

[42] I see no arguable case that the General Division based its decision on any important errors of fact either.[39] Based on my review, the General Division's key findings on the voluntary leave and availability issue are consistent with the evidence in the record.

– **There are no other reasons for giving the Claimant permission to appeal**

[43] In addition to the Claimant's arguments, I also reviewed the file and examined the General Division decision. I didn't find any evidence that the General Division might have ignored or misinterpreted.[40]

Conclusion

[44] 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

[39] See section 58(1)(c) of the DESD Act.
[40] The Federal Court has suggested such a review in decisions like *Griffin v Canada (Attorney General),* 2016 FC 874 and *Karadeolian v Canada (Attorney General),* 2016 FC 615.