



Citation: *NS v Canada Employment Insurance Commission*, 2025 SST 746

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: N. S.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated June 2, 2025
(GE-25-1490)

Tribunal member: Stephen Bergen

Decision date: July 22, 2025

File number: AD-25-471

Decision

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

Overview

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

[3] The Appellant worked as a clinical receptionist. She was hired in November 2023 with a six-month probationary period. She had a performance evaluation in May 2024, at which time the employer determined her performance was not satisfactory. The employer decided to extend her probation until August 2024.

[4] The Claimant's manager met with her to discuss her performance again on August 21, 2024. The manager still had concerns with her performance but told her that she had no authority to make the final decision on whether to keep her or dismiss her. The manager said that the executive director would have to make the decision, but that person was out of the office.

[5] The Claimant understood from this discussion that she was dismissed. She left her job on August 23, 2024, before she received a decision on her continued employment.

[6] The Commission decided that it could not pay her benefits because of its finding that she voluntarily left her job without just cause.

[7] The Claimant disagreed and asked the Commission to reconsider, but it would not change its decision. When she appealed to the General Division of the Social Security Tribunal, the General Division dismissed her appeal.

[8] She is now asking the Appeal Division for permission to appeal.

[9] I am refusing permission to appeal. The Claimant has not made an arguable case that the General Division acted unfairly or that it made an important error of fact.

Issue

[10] Did the General Division make an error of procedural fairness by not giving the Claimant an opportunity to challenge the evidence of the Record of Employment (ROE)?

[11] Did the General Division make an error of fact when it found that she was on payroll until October?

I am not giving the Claimant permission to appeal

General Principles that apply to leave to appeal applications

[12] For the Claimant's application for leave to appeal to succeed, her 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.

[13] 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.¹

[14] 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."²

¹ 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).

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

[15] The only ground of appeal that the Claimant selected in completing her application to the Appeal Division was the ground of appeal concerned with procedural fairness.

Procedural fairness

– What does procedural fairness mean?

[16] Procedural fairness is concerned with the fairness of the process. It is not concerned with whether a party feels that the decision result is fair.

[17] 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 we mean when we talk about procedural fairness.

– There is no arguable case that the General Division acted unfairly by not giving the Claimant an opportunity to challenge the ROE

[18] The Claimant argued that the General Division acted unfairly because it had not given her a chance to prove that the ROE was inaccurate.

[19] The Claimant's ROE showed that September 13, 2024, was the last day for which the Claimant was paid. (It did not find that she was on the payroll until October: The ROE was **issued** in October.) At the General Division, the Claimant testified that the ROE was wrong and that she was last paid on September 5, 2024.

[20] The General Division accepted that the ROE accurately reflected the Claimant's earnings and the periods for which she was paid, so it found that she was paid until September 13. It chose to give the ROE more weight than the Claimant's testimony, because the Claimant had not supported her assertion with documentary evidence.

[21] The General Division is not an inquiry charged with investigating the circumstances of a claim. It makes its decision based on the evidence in the record, which includes testimony, evidence from the reconsideration file, and any other documentary evidence that either party chooses to submit.

[22] It was up to the Claimant to present her strongest case to the General Division, and to place before it the evidence that would support her arguments. The ROE was disclosed to the Claimant prior to the hearing. If the Claimant believed that the ROE was inaccurate, she could have sought documentary evidence to refute it.

[23] In addition, the General Division raised the issue with the Claimant. It highlighted the Commission's argument that she would not have been paid until September 13, 2024 (from the ROE) if she had been terminated or her contract had ended in August 2024. It asked the Claimant if she would like to respond to that argument.

[24] The Claimant could have known from the General Division's questioning how it might eventually use the ROE. If she thought she could obtain additional evidence that would help her to dispute the ROE information, she could have asked for an adjournment, or she could have asked the member for permission to submit additional documents after the hearing.

[25] The General Division did not act unfairly by making its decision on the evidence that was before it. Fairness does not require the General Division to explain what significance it may attach to each piece of evidence, or explain how it will weigh that evidence when it decides the appeal.

Important error of fact

[26] The Claimant did not choose the ground of appeal that is concerned with an error of fact, but she did dispute the ROE evidence that the General Division accepted as correct.

[27] I appreciate that the Claimant is unrepresented. She may not have understood precisely what she should argue. So, I will consider whether the General Division may have made an important error of fact.³

³ I am following the lead of the Federal Court in decision such as *Karadeolian v. Canada (Attorney General)*, 2016 FC 615.

[28] The Appeal Division can only intervene if the General Division made an important error of fact. An important error of fact is where the General Division bases its decision on a finding of fact that ignores or misunderstands relevant evidence, or a finding that does not follow rationally from the evidence.⁴

[29] The General Division considered the ROE evidence, which indicated that the Claimant was paid until September 13. The General Division also acknowledged the Claimant's testimony that the ROE was wrong, and that she got her last pay on September 5, 2024, but it chose to accept that the ROE was accurate.⁵ It found that the ROE supported the employer's statement that it had kept the Claimant on payroll while it consulted with its legal department.

[30] I understand that the Claimant disagrees with the General Division's finding that she was paid until September 13. However, she has not pointed to any evidence that the General Division ignored or misunderstood. She is disagreeing with how the General Division gave more weight to the ROE than to her testimony. However, it is not the role of the Appeal Division to re-weigh or re-evaluate the evidence to reach a different conclusion.⁶

[31] In the end, the General Division found that the Claimant chose to leave before the employer made a decision on whether to terminate her employment. That meant that she did not have to leave when she did.

[32] I note that the General Division could have reached the same decision even if it had accepted that the Claimant was last paid on September 5. It relied also on the employer's August 26 email, which suggested that the Claimant could still choose to wait for the decision of the executive director. The General Division said that the email showed that the Claimant had the choice to return to work even then.

⁴ This is a paraphrase. An "important error of fact" is the error described in section 58(1)(c) of the DESDA.

⁵ See paras 25 and 27 of the General Division decision.

⁶ See for example: *Hideq v Canada (Attorney General)*, 2017 FC 439, *Parchment v Canada (Attorney General)*, 2017 FC 354, *Johnson v Canada (Attorney General)*, 2016 FC 1254, *Marcia v Canada (Attorney General)*, 2016 FC 1367.

[33] I appreciate that the Claimant disagrees and that she believes the employer had effectively terminated her employment on August 21, or that it would not be renewing her contract.

[34] But she has not made out an arguable case that the General Division made any error of a kind that I can consider. The Claimant's appeal has no reasonable chance of success.

Conclusion

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

Stephen Bergen
Member, Appeal Division