



Citation: *Canada Employment Insurance Commission v DL*, 2025 SST 691

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Canada Employment Insurance Commission
Representative: Nikkia Janssen

Respondent: D. L.

Decision under appeal: General Division decision dated April 22, 2025
(GE-25-613)

Tribunal member: Glenn Betteridge

Type of hearing: Teleconference

Hearing date: June 25, 2025

Hearing participants: Appellant's representative
Respondent

Decision date: June 26, 2025

File number: AD-25-360

Decision

[1] I am allowing the Canada Employment Insurance Commission's appeal. The General Division made a legal error and decided an issue it didn't have the power to decide.

[2] To fix those errors, I am sending D. L.'s case back to the General Division to reconsider.

Overview

[3] D. L. is the Claimant. He worked in Northern Ontario. His job ended then he applied for EI regular benefits. He relocated to Southern Manitoba around the time his job ended and he applied for benefits.

[4] The Commission decided he didn't work enough insurable hours to qualify for benefits. It based its decision on the hours his employer said he worked and the regional rate of unemployment for Southern Manitoba.

[5] He disagreed with the region that the Commission used. He says he resided in Northern Ontario and he worked enough hours to qualify. So he appealed to the General Division.

[6] The General Division allowed his appeal. It decided he was ordinarily resident in Northern Ontario, and he had enough hours to qualify for benefits. I gave the Commission permission to appeal the General Division decision.

[7] The Commission argues the General Division made four errors. The Commission says I should fix those errors by sending the Claimant's appeal back to the General Division. The Claimant argues the General Division decision is correct. He didn't take a position on how I should fix an error if I found one.

[8] I am allowing the Commission's appeal and sending the Claimant's case back to the General Division to reconsider.

Issues

[9] I will decide three issues.

- Did the General Division make a legal error by not following the legal test to decide the region where the Claimant was ordinarily resident?
- Did the General Division decide an issue it had no power to decide when it decided the number of hours the Claimant worked?
- If the General Division made an error, how should I fix it?

Analysis

[10] The law gives the Appeal Division the power to fix General Division errors.¹ I can consider four types of errors, including legal errors and jurisdictional errors.

[11] A person qualifies for EI benefits by working the number of insurable hours (hours) the law requires—based on their regional rate of unemployment.²

The General Division didn't follow a legal test

[12] The General Division makes a legal error when it misinterprets the *Employment Insurance Act* (EI Act) or the *Employment Insurance Regulations* (EI Regulations), or doesn't follow part of a legal test it had to use.

[13] Section 17(1.1) of the EI Regulations says the number of hours a person needs to qualify for EI benefits comes from the unemployment rate in the **region a person is ordinarily resident**. That section incorporates section 10(1) of the EI Act, which sets the week when a person's **benefit period begins**.

[14] The General Division decided the Claimant was ordinarily resident in Northern Ontario at the time his benefit period began (paragraph 23).

¹ See sections 58(1) and 59 (1) of the *Department of Employment and Social Development Act* (DESD Act).

² See section 7(2) of the *Employment Insurance Act* (EI Act).

[15] The Commission argues the General Division didn't correctly understand and use the law.³ The Commission says the General Division made a legal error when it didn't clarify the week the Claimant's benefit period began.

[16] I agree with the Commission's argument.

[17] The General Division cited section 17 of the EI Regulations. But didn't follow it. The General Division didn't make a finding about when the Claimant's benefit period began under section 10(1) of the EI Act. In other words, it didn't use part of the legal test it had to use to decide the region where the Claimant was ordinarily resident. This was a legal error.

[18] This legal error meant the General Division did not focus on the most legally relevant evidence—where he was ordinarily resident **when his benefit period began**.

The General Division didn't have the legal authority to decide the Claimant's hours—a jurisdictional error

[19] Jurisdiction means a tribunal's legal authority to decide. The General Division makes a jurisdictional error when it decides an issue it has no authority to decide.

[20] The number of hours the Claimant worked was an issue in his General Division appeal. The Claimant challenged the Commission's decision about his hours.⁴ And the Commission's file contained contradictory evidence about his hours.

[21] The General Division allowed the Claimant to send in a pay stub after the hearing, which he did.⁵ The General Division sent his pay stub to the Commission and the Commission made additional arguments about the Claimant's hours.⁶

³ See AD2-5.

⁴ See GD2-11. At the hearing the Claimant said his record of employment (ROE) had been changed since he filed his claim, but he didn't receive an amended ROE. The Claimant referred to his final pay stub (October 24 to October 30). He said it shows regular pay of 40 hours that doesn't appear on his original ROE. The Claimant argued those were insurable hours, so he had 688 hours, which was enough to qualify in Northern Ontario or Southern Manitoba. Listen to the General Division hearing recording starting at 7:20. See also the Commission's footnote 55, at AD2-7.

⁵ See GD5 and GD6.

⁶ See GD7.

[22] The General Division reviewed the evidence and decided the Claimant worked “at least 648 hours” (paragraph 36).

[23] The Commission argues the General Division exceeded its jurisdiction when it decided the Claimant worked 648 hours.⁷ It says the Claimant questioned the changes the Commission made to his ROE. And the evidence suggested not all of his hours fell in his qualifying period. And because this evidence wasn’t clear, only the CRA could decide on his hours.⁸

[24] I accept the Commission’s argument.

[25] The EI Act gives the Canada Revenue Agency (CRA) the sole authority to determine a person’s hours of insurable employment when that’s an issue in a claim.⁹ The law that created the General Division says the same thing.¹⁰ The EI Act also gives an employer, an employee, and the Commission a right to get a ruling from the CRA.¹¹

[26] In the circumstances of the Claimant’s appeal, the General Division didn’t have the authority to decide the number of hours he worked. But it did anyway. In other words, the General Division made a jurisdictional error.

Fixing the error by sending the Claimant’s case back to the General Division to reconsider

[27] I am sending the Claimant’s case back to the General Division to reconsider because his hours of insurable employment are in dispute. Like the General Division, the Appeal Division doesn’t have the legal authority to decide this issue. And even if the Commission gave me a CRA ruling, I can’t base my decision on new evidence that wasn’t before the General Division.

⁷ See AD2-7.

⁸ The Commission relies on section 64(3) of the DESD Act, and sections 90 and 90.1 of the EI Act.

⁹ See sections 90 and 90.1 of the EI Act.

¹⁰ See section 64(3) of the DESD Act.

¹¹ See section 90 of the EI Act.

[28] Depending on the region where the Claimant was ordinarily resident when his benefit period started, the CRA ruling could determine whether he qualifies for benefits.

[29] I would strongly encourage the Commission to request an insurable hours ruling from the CRA without delay.

[30] The Claimant can ask the General Division to expedite his appeal. Once a new file is opened at the General Division, he can send an email or call the tribunal.

Conclusion

[31] I am allowing the Commission's appeal and sending the Claimant's case back to the General Division to reconsider.

Glenn Betteridge
Member, Appeal Division