Citation: *IS v Canada Employment Insurance Commission*, 2025 SST 697

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	I. S.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated May 20, 2025 (GE-25-1345)

Tribunal member:	Stephen Bergen
Decision date:	**June 30, 2025**
File number:	AD-25-444

Decision

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

Overview

[2] I. 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 lost his job in September 2024 and applied for benefits on October 4, 2024. When he applied for EI benefits, the Commission determined that he was eligible for 15 weeks of benefits. The Claimant believed he should get more weeks of benefits, so he asked the Commission to reconsider. The Commission would not change its decision, so he appealed to the General Division. The General Division dismissed his appeal.

[4] He is now asking the Appeal Division for permission to appeal the General Division.

[5] I am refusing permission to appeal. The Claimant has not made out an arguable case that the General Division made an error of jurisdiction or any other error that I may consider.

Issues

[6] The issues in this appeal are as follows:

a) Is there an arguable case that the General Division made an error of jurisdiction?

b) Is there an arguable case that the General Division made an important error of fact by failing to consider the temporary EI measures introduced in March 2025 (New Measures)?

c) Is there an arguable case that the General Division made an error of law by failing to interpret provisions of the *Employment Insurance Act* (EI Act) in light of the New Measures?

d) Is there an arguable case that the General Division made an error of law by failing to follow applicable case law?

I am not giving the Claimant permission to appeal

General legal principles for leave to appeal applications

[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.[1]

[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."[2]

Error of Jurisdiction

[10] There is no arguable case that the General Division made an error of jurisdiction.

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[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.

[11] The Claimant selected “error of jurisdiction” as his ground of appeal. However, he did not explain why he thought the General Division made an error of jurisdiction.

[12] An error of jurisdiction is where the General Division fails to make a decision that it is required to make, or where it makes a decision that it is not authorized to make.

[13] Only reconsideration decisions may be appealed to the General Division.[3] Therefore, the General Division had jurisdiction to consider only those issues arising from the reconsideration decision that was appealed.

[14] The reconsideration decision of March 24, 2025, considered the number of weeks of benefits payable to the Claimant. The General Division decision also considered this issue. It did not consider any other issue.

Important error of fact

[15] There is no arguable case that the General Division made an important error of fact.

[16] An important error of fact is where the General Division’s decision is based on a finding of fact that overlooks or misunderstands relevant evidence, or is based on a finding that does not rationally follow from the evidence.[4]

[17] According to the General Division, the Claimant argued that his benefit period should be longer, and that he should get 36 to 48 weeks. However, having a longer benefit period would not have helped the Claimant since it would not have increased his entitlement to additional weeks of benefits.

[18] I will assume that this was just a slip. The General Division dealt with the number of weeks of benefits to which the Claimant was entitled, so I suspect the General

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[3] See section 113 of the *Employment Insurance Act* (EI Act).
[4] Section 58(1)(c) of the DESDA describes the error more precisely. It says that it is where, “the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.”

Division member meant to say that the Claimant believed he should be entitled to more weeks of benefits within his benefit period.

[19] Calculating the number of weeks of a claimant's entitlement is straight-forward. For the General Division to reach a decision, it needed to consider the following:

- the economic region in which the Claimant was ordinarily resident in the week prior to the establishment of his benefit period;[5]
- the rate of unemployment for the same economic region at the same time;[6]
- the Claimant's qualifying period;[7] and,
- the number of hours of insurable employment the Claimant accumulated within that qualifying period.[8]

[20] Equipped with these facts, the General Division has all that it needs to confirm the maximum number of benefit weeks available by consulting Schedule I to the EI Act.

[21] The Claimant lost his job on September 26, 2024. He was initially paid benefits on an existing claim, before a new claim was established on October 20, 2024. This means that the relevant time for determining the region in which he ordinarily resided, as well as for determining the regional rate of unemployment, is the week prior to October 20, 2024.

[22] When the Claimant lost his job and when he applied for EI benefits, he resided in Kanata, Ontario. Kanata is located in the Ottawa economic region. There was no evidence in the file that the Claimant changed his residence between September 26, 2024, and October 20, 2024.

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[5] See section 17(1.1) of the *Employment Insurance Regulations* (Regulations).
[6] See section 17(1) of the Regulations.
[7] See section 8 of the EI Act.
[8] See section 12(2) of the EI Act and Schedule I.

[23] Relying on information from Statistics Canada, the Commission determined that the regional rate of unemployment for the Ottawa economic region in the week prior to October 20, 2024, was 6.1%.[9]

[24] In his appeal to the General Division, the Claimant did not dispute either the place of ordinary residence, nor the regional rate of unemployment used by the Commission.[10] He also agreed with the qualifying period, and that he accumulated 698 hours within that qualifying period.[11] Schedule I dictates that a claimant with between 655 and 699 hours of employment and living in an economic region with an unemployment rate of between 6% and 7% is entitled to 15 weeks.

[25] Those facts which were relevant to the General Division's decision were based in the evidence and undisputed by the Claimant. The General Division did not make an error of fact, because it did not misunderstand or ignore any of the evidence that was relevant to a finding on which the decision was based.

[26] The Claimant suggests that the General Division made an error of fact because it ignored his claim that the Minister of Employment, Workforce Development and Labour ("Minister") made a March 2025 announcement of the government's intention to implement new temporary employment measures to support workers. or what he calls "New EI Measures 2025."[12]

[27] The Claimant "evidence" was comprised of his own interpretation of the Minister's announcement, although he included two paragraphs within quotation marks, implying that they were direct quotes from the announcement. He did not provide a reference for the announcement or the quote, or for information on the announcement.

[28] Nonetheless, the General Division did consider the Claimant's arguments about what it called the "*Temporary Employment Insurance measures to respond to major*

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[9] See section 17(1) of the Regulations.
[10] See para 7 of the General Division decision.
[11] See paras 25 and 27 of the General Division decision.
[12] See AD1-20.

changes in economic conditions," at least in terms of their legal effect.[13] It appears that it accepted the Claimant's information at face value or that it verified it from a government source.[14]

[29] However, the General Division found that these measures did not apply to the Claimant.[15] If the General Division is correct that they were inapplicable, then the Claimant's "evidence" of the measures was not relevant to any of the General Division's findings. The General Division cannot make an error by considering irrelevant evidence.

[30] I will consider in the next section whether the General Division made an error of law by failing to apply the New Measures to interpret the law.

Error of law

[31] The Claimant argued that the General Division made an error of law by failing to consider, "relevant legal precedents and established jurisprudence that underscore the necessity of maintaining flexibility within the Employment Insurance framework to fairly accommodate claimants."[16] I will also consider whether the General Division made an error of law in finding that the New EI Measures 2025 were inapplicable.

– Failure to interpret the law in light of the New EI Measures 2025

[32] There is no arguable case that the General Division made an error of law by not interpreting the Claimant's entitlement to benefits in light of the New EI Measures 2025.

[33] According to the Claimant's evidence, the "announcement" of these measures did not take place **until March 2025**.[17] There was no evidence on how, whether, or when the Minister's announcement was actually given legal effect.

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[13] See General Division decision at paras 53–61.
[14] The footnote to the General Division's description of particulars of the announcement or EI changes at paras 58, 59, and 62 reads: "See Government of Canada—Employment Insurance Benefits—*Temporary Employment Insurance measures to respond to major changes in economic conditions*."
[15] See General Division decision at para 57.
[16] See AD1-20.
[17] See GD5-3.

[34] The General Division had to determine whether this new announcement had any retroactive effect. The member apparently took judicial notice of details of the government's position on the New Measures. It referred to the Government of Canada website information, which indicated that the Government had suspended, or intended to suspend, the waiting period week (potentially adding one week of benefits) **for claims between March 30, 2025**, and October 11, 2025, and that it had adjusted, or intended to adjust, the regional rate of unemployment (which would add two weeks of benefits if applicable to the Claimant) for **claims starting April 6, 2025.**

[35] The General Division found that the New Measures did not apply to the Claimant. It noted that he applied for benefits on October 2, 2024, had a benefit period established on October 20, 2024, and was paid 15 weeks of benefits—which would mean they ended in February 2025. Assuming the new measures were given effect, they were not given retroactive effect to modify the legislative provisions under which the Claimant was paid benefits.

[36] The Claimant argued that the New Measures ought not to be considered in isolation. He notes that they would be the product of a shift in government policy requiring significant preparation.[18]

[37] That may be, but the General Division is required to apply the law in effect at the time of the Claimant's claim. It cannot reimagine the law based on the government's stated intention to adopt a new approach. The government's announcement is not law. But even if its announcement was formalized into law, a law that is made effective on a particular date does not change the law prior to the effective date.

– **Failing to follow legal precedent**

[38] There is no arguable case that the General Division made an error of law by not following legal precedent.

[18] See AD1-21.

[39] At the General Division, the Claimant referred to a Supreme Court of Canada decision, two decisions of the Federal Court of Appeal, and four decisions of the Tribunal. The Claimant is of the view that these decisions "reinforce the principle that EI should adapt to real-world economic conditions to support unemployed workers fairly and equitably." According to the Claimant. The General Division should have applied these principles and agreed that he should receive more weeks of benefits.

[40] The Claimant cited *Jove*, a decision of the Supreme Court of Canada, and T-Giorgis (and had also cited Puig in his General Division submissions), which are decisions of the Federal Court of Appeal. The Tribunal is bound to follow decisions from all three courts.

[41] However, none of these decisions suggest that a claimant may be given benefits in excess of the legislated maximum. Neither do they lay down any generally applicable principle that the Commission or Tribunal must take equitable principles into account or consider economic downturns or financial hardship.

[42] They deal with unrelated issues. *Jove* concerns a claimant who was asking for an extension of his benefit period, so that he could receive more of the weeks to which he was entitled. The Claimant is asking for additional weeks of benefits, which is completely different from the situation in *Jove*. Furthermore, the Court in *Jove* did not find that the claimant should be entitled to the extension because it would be equitable to do so. It referred the matter back to the Federal Court of Appeal with directions to grant the extension because it found that a particular provision of the Unemployment Insurance Act allowed for that extension. There is no principle from *Jove* to apply to the issue or facts of this case.

[43] *T-Giorgis* considered a claimant's entitlement to special Emergency Response Benefit provisions brought into law as part of the Government's response to Covid. *Puig* dealt with whether the Commission could reconsider its decision to pay benefits when it later determined the claimant was ineligible. Again, these issues have nothing to do with how the Commission determines a Claimant's weeks of benefits.

[44] I note that both *T-Giorgis* and *Puig* referred their respective appellants to the Commission's ability to write off a debt. Both decisions also mentioned that the Commission could take financial hardship into consideration if the claimant requested a write-off. But whatever the Court may have said about write-offs in each of these decisions was not necessary to the decision, so it has nothing to do with establishing a legal principle. Write-offs are also special cases. As the Claimant knows, the *Employment Insurance Regulations* (Regulations) specifically allow that financial hardship can be relevant to the Commission's own consideration of write-offs.[19] However, nothing in the Act or Regulations allows that financial hardship is relevant to how the Commission calculates the weeks of benefits for a claimant.

[45] Other decisions of the Appeal Division or General Division of the Tribunal are not binding, but they may be persuasive—providing they are applicable. But, like the court decisions, the Tribunal decisions cited by the Claimant are not applicable to the facts and issues in this appeal.

[46] I do not need to explain why the Tribunal decisions do not help the Claimant to show that the General Division made an error of law. The General Division ably described the decisions in RL, SA and LC, and addressed the Claimant's description of TB.[20] It explained how those decisions did not apply.[21] I cannot find an error in its reasoning.

[47] Not one of the court or Tribunal decisions identified by the Claimant suggest that either the Commission or the Tribunal may interpret benefit provisions "flexibly" or disregard them, or modify the effect of those provisions to account for economic hardship (where this is not expressly authorized by the EI Act or Regulations).

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[19] See 56(1)(f)(ii) of the Canada Employment Insurance Regulations.
[20] The Claimant did not provide the General Division with a complete citation for TB, and the General Division could not find it. This was mentioned in the decision at para 75, but the Claimant's submissions to the Appeal Division do not remedy the incomplete citation.
[21] See paras 44–49 and 71–76 of the General Division decision.

[48] The EI Act and its Regulations are law and its provisions that describe the maximum benefit entitlements are clear. It does not grant the Commission or the Tribunal discretion in how they determine a claimant's entitlement to weeks of benefits.

[49] Regardless of the Claimant's view of flexibility and fairness, the General Division could not make a finding in favour of the Claimant that was contrary to the law. He suggests that the benefit provisions should be interpreted, "equitably." But the Tribunal is a creature of statute.[22] This means that it has no authority to apply equitable principles.

[50] I am unaware or any court decision, or decision of the Tribunal, under whose authority the Commission or the Tribunal might disregard the law. The Supreme Court of Canada has said that "a judge is bound by the law. He cannot refuse to apply it, even on the grounds of equity."[23]

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

Conclusion

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

Stephen Bergen
Member, Appeal Division

[22] See section 44(1) of the *Department of Employment and Social Development Act.*
[23] See *Granger v. Canada (Canada Employment Insurance Commission*), [1989] 1 S.C.R. 141