



Citation: *JF v Canada Employment Insurance Commission*, 2025 SST 1172

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: J. F.

Respondent: Canada Employment Insurance Commission
Representative: Amélie Lavoie

Decision under appeal: General Division decision dated September 2, 2025
(GE-25-2383)

Tribunal member: Stephen Bergen

Type of hearing: In Writing

Decision date: November 12, 2025

File number: AD-25-577

Decision

[1] I am allowing the appeal. The General Division made an error of procedural fairness, so I am returning the matter to the General Division for reconsideration.

Overview

[2] J. F. is the Appellant. 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 was dismissed from his job in 2023. He filed a claim for EI benefits, but he did not complete any weekly claim reports or receive benefits. About two years later, he asked the Commission to let him file the claim reports late, so that he could receive the benefits retroactively.

[4] The Commission did not accept that the Claimant had good cause for the delay in filing his claim reports, so it refused to backdate them. It would not change its decision when the Claimant asked it to reconsider.

[5] The Claimant appealed to the General Division of the Social Security Tribunal, but the General Division dismissed his appeal. He is now appealing to the Appeal Division.

[6] I am allowing his appeal. The General Division made an error of procedural fairness. I am returning the matter to the General Division to reconsider its decision.

Preliminary Issues

New evidence

[7] The Claimant sent the Appeal Division his own affidavit dated “September g 2025.” (sic)¹

¹ See AD1-13, 14.

[8] I cannot consider the affidavit.

[9] The Appeal Division does not generally consider new evidence that was not before the General Division. There are a few limited exceptions, but the Claimant has submitted the affidavit to prove one of the facts on which he relied to argue that he had good cause for delay. This was the issue that was on appeal to the General Division.

[10] The courts do not allow the Appeal Division to consider new evidence submitted for the purpose of challenging the facts found by the General Division.²

Issues

[11] The issues in this appeal are:

Procedural fairness error

- a) Did the General Division act in a way that was procedurally unfair by not giving the Claimant an opportunity to explain his evidence?

Error of Jurisdiction

- b) Did the General Division make an error of jurisdiction by failing to decide whether the Claimant had good cause for the delay under section 10(5) of the *Employment Insurance Act* (EI Act) without addressing the Commission's discretion under section 50(10) of the EI Act.

Error of law

- c) Did the General Division make an error of law by not explaining how it was weighing evidence or making credibility findings?
- d) Did the General Division make an error of law in how it applied the "reasonable person" standard to the test for good cause?

² *Sibbald v Canada (Attorney General)*, 2022 FCA 157; *Gittens v. Canada (Attorney General)*, 2019 FCA 256; *Marcia v Canada (Attorney General)*, 2016 FC 1387; *Bellefeuille v Canada (Attorney General)*, 2014 FC 963.

- e) Did the General Division ignore jurisprudence related to the definition of “good cause”?

Error of fact

- f) Did the General Division make a finding of fact that was not rationally related to the evidence when it discounted the Claimant’s explanation as “self-serving”?
- g) Did the General Division ignore evidence that the claimant was misled by his employer to believe he was ineligible for EI benefits?

Analysis

General legal principles for appeals to the Appeal Division

[12] The Appeal Division may only consider errors that fall within one of the following grounds of appeal:

- 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 made an error of law when making its decision.
- d) The General Division based its decision on an important error of fact.³

Procedural fairness

[13] The General Division acted in a way that was procedurally unfair by not giving the Claimant an opportunity to clarify or supplement his written submissions.

[14] The Claimant filed a Notice of Appeal and opted for an in-writing appeal process. The General Division proceeded with the hearing as an in-writing process. It relied on the submissions attached to the Claimant’s Notice of Appeal and did not ask him to provide any supplemental submission.

³ This is a plain-language version of the three grounds. The full text is in section 58(1) of the *Department of Employment and Social Development Act* (DESDA).

– **The General Division did not give the Claimant an opportunity to elaborate on efforts to contact the Commission**

[15] The General Division referred to certain evidence from the Notice of Appeal that was related to the Claimant's efforts to contact the Commission. It chose to give more weight to the initial explanation the Claimant had given the Commission, because his Notice of Appeal evidence was "lacking in detail." The General Division inferred from this lack of detail that the evidence was "self-serving."⁴

[16] The General Division did not explain how it arrived at its view that the Claimant's explanation was "self-serving" from what it saw as a lack of detail. If it meant to imply that the Claimant manufactured an explanation for the purpose of assisting his appeal, it ought to have made a clear credibility finding.

[17] At any rate, the General Division did not inform the Claimant that it was concerned that his submissions were lacking in detail, and it did not warn him that it meant to draw some kind of adverse inference from the missing details.

– **The General Division did not give the Claimant an opportunity to supplement the evidence of his mental health challenges.**

[18] Likewise, the General Division did not give the Claimant an opportunity to expand on how his mental health challenges interfered with his ability to submit his claims on time. It said that he did not submit medical documents to confirm his diagnosis, or provide "enough" information for it to conclude that his mental health prevented him from making claims.

[19] Again, this was a written hearing process. The Claimant had no opportunity to respond to the General Division's concerns, either to offer to obtain and submit additional documents or to expand on his explanation. If the General Division was going to dismiss the Claimant's appeal on the basis that it did not have enough information, it should have given the Claimant an opportunity to supply that information.

⁴ See para 28 of the General Division decision.

[20] Its failure to do so meant that the Claimant did not have a fair chance to be heard. The General Division process was unfair, as the Commission concedes.

[21] I acknowledge that the Claimant provided extensive submissions and I appreciate that his submissions questioned the General Division decision in several ways. However, I do not need to address all of the questions arising from those submissions, because I have found that the General Division made a procedural fairness error.

Remedy

[22] Since I have found an error in the General Division's decision, I have to decide what I should do to fix it. I have the power to send the matter back to the General Division to reconsider, or I may make the decision that the General Division should have made.⁵

[23] The Claimant asks me to allow his appeal and reverse the General Division decision. As an alternative, the Claimant asks me to return the matter to the General Division for a new hearing.

[24] The Commission recommends that I return the matter to the General Division for reconsideration.

[25] I am returning the matter to the General Division for reconsideration.

[26] I have found that the General Division did not give the Claimant a fair opportunity to fully explain, or support, his reasons for filing his claim reports late. As a result, it may not have had all the evidence it needed to make a fair decision. Since the Appeal Division cannot receive new evidence, I cannot be sure I have all the evidence either. Therefore, I cannot cure the General Division's error by substituting my decision for that of the General Division.

⁵ See section 59(1) of the DESDA.

[27] The matter must be returned to the General Division to give the Claimant an opportunity to explain any contradictions or discrepancies in his evidence. In addition, a new hearing will allow him to fully describe all of the difficulties he has encountered in contacting Service Canada or the Commission, and any other circumstances (such as his mental health condition), that interfered with his ability to obtain information or to file claim reports between July 15 and April 28, 2025. If he has documents or other evidence to corroborate how his circumstances affected him in this period, he can submit that evidence to the General Division.

Conclusion

[28] I am allowing the appeal and returning the matter to the General Division for reconsideration.

[29] So far, the Claimant has always asked for his hearings to proceed by written submissions. He may maintain that he wants a written process for his second General Division hearing. If so, the General Division should take steps to ensure that the Claimant has a fair opportunity to respond to any concerns it may have with the quality or sufficiency of his evidence.

Stephen Bergen
Member, Appeal Division