



[TRANSLATION]

Citation: *GB v Canada Employment Insurance Commission*, 2026 SST 184

## Social Security Tribunal of Canada Appeal Division

# Decision

**Appellant:** G. B.  
**Representative:** M. T.

**Respondent:** Canada Employment Insurance Commission  
**Representative:** Audrey Pratte

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**Decision under appeal:** General Division decision dated October 30, 2025  
(GE-25-2828)

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**Tribunal member:** Elsa Kelly-Rhéaume

**Type of hearing:** Teleconference

**Hearing date:** February 5, 2026

**Hearing participants:** Appellant  
Appellant's representative  
Respondent  
Respondent's representative

**Decision date:** March 10, 2026

**File number:** AD-25-770

## Decision

[1] The appeal is allowed. I am substituting my decision for the General Division's decision. The Claimant, G. B., is entitled to Employment Insurance (EI) sickness benefits from March 28 to April 25, 2025, and from May 14 to July 10, 2025. He wasn't able to work because of an illness or injury, and he would otherwise have been available for work.

[2] But he isn't entitled to EI benefits for the period from April 28, 2025, to May 9, 2025, inclusive. This is because he didn't provide a medical certificate for that period and worked during that time.

## Overview

[3] The Claimant applied for sickness benefits on April 7, 2025.<sup>1</sup> He had trauma to both eyes, making him unable to work from March 28 to April 25, 2025.<sup>2</sup> He also provided medical certificates confirming that he wasn't able to work from May 14 to July 10, 2025.<sup>3</sup>

[4] The Canada Employment Insurance Commission (Commission) decided that the Claimant wasn't entitled to sickness benefits as of April 13, 2025, because he didn't prove that he would have been available for work if he hadn't been sick.<sup>4</sup> It found that— if he hadn't been sick—he would have been working part-time by personal choice. It also decided that he was disentitled from receiving sickness benefits from April 28 to May 9, 2025, because he didn't provide a medical certificate for that period.

[5] The Claimant asked for those decisions to be reconsidered.<sup>5</sup> The Commission upheld the decisions.<sup>6</sup>

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<sup>1</sup> See the application for sickness benefits at GD3B-11.

<sup>2</sup> See the certificate for time off work at GD3A-15.

<sup>3</sup> See the medical certificates at GD3A-16 and GD3A-18.

<sup>4</sup> See the notice of decision at GD3B-33.

<sup>5</sup> See the reconsideration request at GD3A-19.

<sup>6</sup> See the notice of decision at GD3A-30.

[6] The Claimant appealed the reconsideration decision to the General Division.<sup>7</sup> The General Division dismissed the Claimant's appeal. It acknowledged that he wasn't able to work because he was sick and had eye surgery.<sup>8</sup> But it found that he would not have been available for work if he hadn't been sick. It said that he could not be considered available for work because he was working part-time.<sup>9</sup>

[7] The Claimant asked for permission to appeal the General Division decision. I gave permission to appeal it.

[8] In his application to the Appeal Division, the Claimant said that the General Division made an error when it decided that working part-time was a personal choice.<sup>10</sup> He also said the case law says that the only relevant issue in determining availability for sickness benefits is whether being sick prevents the claimant from working.

## **Preliminary matter**

### **I can't accept new evidence**

[9] The Claimant sent a letter from his employer to the Appeal Division in support of his application.<sup>11</sup> In that letter, the employer said that the Claimant was an excellent welder-fitter and that it wanted to keep him employed for a long time.

[10] That letter wasn't before the General Division. I told the Claimant at the hearing that I could not accept this letter because it was new evidence. And this new evidence doesn't fall under any of the exceptions that would allow me to accept new evidence.<sup>12</sup>

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<sup>7</sup> See the notice of appeal at GD2-1 and following.

<sup>8</sup> See the General Division decision at AD1A-2 at para 2.

<sup>9</sup> See the General Division decision at AD1A-5 at para 18.

<sup>10</sup> See the application to the Appeal Division at AD1-1.

<sup>11</sup> See the employer's letter at AD4-7.

<sup>12</sup> The Appeal Division can accept new evidence in exceptional cases when the evidence relates to general information, when it concerns procedural defects, or when it shows a complete lack of evidence.

## Issues

[11] The issues are the following:

- a) Did the General Division make an error of jurisdiction by not deciding one of the issues?
- b) If so, how should I fix the error?

## Analysis

[12] I can intervene if the General Division made one of the following errors:

- failed to follow the principles of procedural fairness
- made an error of jurisdiction, meaning that it failed to decide an issue it had to decide or decided an issue it didn't have the right to decide
- made an error of law
- made an important error of fact<sup>13</sup>

## **The Commission acknowledges that the General Division made errors of law and of jurisdiction**

[13] In its written arguments to the Appeal Division, the Commission acknowledged that the General Division made the following two errors of law:

- The General Division should have applied *Page*.<sup>14</sup>
- The General Division confused the Claimant's physical abilities with personal conditions that unduly limited his ability to work.

[14] Also, at the hearing before the Appeal Division, the Appeal Division asked the Commission whether it considered that the General Division's failure to decide the issue of the period from April 28 to May 9, 2025—and the lack of a medical certificate for that

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<sup>13</sup> See section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

<sup>14</sup> See the Federal Court of Appeal decision *Page v Canada (Attorney General)*, 2023 FCA 169.

period—was an error of jurisdiction. The Commission acknowledged that this was in fact a refusal to use its jurisdiction.

[15] So, the Commission acknowledged the existence of three errors. At the hearing, the Claimant said he agreed that the General Division made these errors.

[16] I only need to identify an error based on one of the grounds of appeal set out in the *Employment Insurance Act* (EI Act) for me to intervene. So, I will only look at the General Division's error of jurisdiction before explaining my choice of remedy to fix it.

### **The General Division refused to use its jurisdiction by not deciding one of the issues**

#### **– The General Division had to decide whether the Claimant was entitled to sickness benefits from April 28 to May 9, 2025**

[17] The Claimant appealed the Commission's reconsideration decision dated September 16, 2025. That reconsideration decision addressed two issues:

- Sickness benefits (not otherwise available)
- Failure to provide a medical certificate

[18] The Claimant appealed that reconsideration decision to the General Division.<sup>15</sup> He clearly stated in his notice of appeal that he was challenging the Commission's decision on these two issues. He stated that he sent four medical certificates to the Commission.

[19] So, the issue of failing to provide a medical certificate for the period from April 28 to May 9, 2025, was in dispute before the General Division. In fact, this issue was before the General Division under section 113 of the EI Act because the Claimant was disputing this issue. The General Division also addressed this issue in its introduction to

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<sup>15</sup> See the notice of appeal at GD2-4.

the hearing and asked the Claimant to state his position on it.<sup>16</sup> But it didn't decide this issue in its decision.

[20] So, the General Division failed to decide an issue that was in dispute before it. This constitutes a refusal to use its jurisdiction. This means that I can intervene.

## Remedy

[21] Because I found that the General Division made an error that the *Department of Employment and Social Development Act* (DESD Act) allows me to fix, I have to decide how I will fix that error. The DESD Act allows me to give the decision that the General Division should have given.<sup>17</sup>

[22] The Claimant said he wanted me to give the decision that should have been given.

[23] The Commission also said I should give the decision that should have been given. It didn't say what the outcome of my decision should be. It said it would leave that to my discretion.

[24] The file is complete. Even though the General Division failed to decide the issue of the period from April 28 to May 9, 2025, the evidence about those weeks is in the administrative file as well as the testimony given at the General Division hearing. So, I have all the information I need to give the decision that should have been given.

## I am giving the decision that should have been given

- **The Claimant didn't provide a medical certificate for the period from April 28 to May 9, 2025, so he isn't entitled to sickness benefits for that period**

[25] Section 18(1)(b) of the EI Act says that you aren't entitled to be paid benefits for a working day in a benefit period for which you fail to prove that you were unable to work because of an illness or injury, and that you would otherwise be available for work.

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<sup>16</sup> Listen to the General Division hearing recording at 4:08 and 6:30.

<sup>17</sup> See section 59(1) of the DESD Act.

[26] Section 40(1) of the *Employment Insurance Regulations* says that to prove inability to work because of illness or injury, you need a medical certificate completed by a medical doctor or other medical professional attesting to your inability to work.

[27] The Claimant told Service Canada that he didn't have a medical certificate for the weeks from April 27 to May 10, 2025, because he tried to work a few hours.<sup>18</sup> He also stated he didn't have medical evidence for this period in another phone call with Service Canada. He confirmed that he worked a few hours per week. He stated that his ophthalmologist didn't extend his leave from work during that period because his eye trauma had healed.<sup>19</sup> There is no medical certificate in the administrative file for the period from April 28 to May 9, 2025.

[28] The Claimant told the Commission that he went back to work on April 26, 2025.<sup>20</sup> He stated that he then went back on medical leave on May 15, 2025.<sup>21</sup>

[29] The Claimant didn't provide a medical certificate for the period from April 28 to May 9, 2025, and stated that he worked during that time. This means that he isn't entitled to sickness benefits for the period from April 28 to May 9, 2025, inclusive.

– **The Claimant wasn't able to work and would have been available for work if he hadn't been sick from March 28 to April 25, 2025, and from May 14 to July 10, 2025, inclusive**

[30] Section 18(1)(b) of the EI Act says that to be entitled to be paid sickness benefits, you have to show that you were unable to work because of an illness or injury, and that you would otherwise be available for work if you hadn't been sick.

[31] The Commission says that I have to apply the three factors that the Federal Court of Appeal established in *Faucher*<sup>22</sup> to decide whether the Claimant would have been available for work if he hadn't been sick. But the three factors were established to

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<sup>18</sup> See the notes about a phone call with the Claimant at GD3A-17.

<sup>19</sup> See the notes about a phone call with the Claimant at GD3A-29.

<sup>20</sup> See the notes about a phone call with the Claimant at GD3B-17.

<sup>21</sup> See the notes about a phone call with the Claimant at GD3B-17.

<sup>22</sup> See the Federal Court of Appeal decision *Faucher v Canada Employment and Immigration Commission*, A-56-96/A-57-96.

determine the availability of someone who wants to be paid regular benefits and is unable to find suitable employment under section 18(1)(a) of the EI Act. That isn't the case for the Claimant. He has worked in the same job for 31 years.

[32] There are no binding decisions about the legal test to be applied when deciding whether a claimant who is unable to work because of an injury or illness would otherwise have been available for work. But Appeal Division decisions that I find persuasive have determined that applying the three factors set out in *Faucher* isn't always necessary or appropriate when deciding whether a claimant who is unable to work because of an illness or injury would otherwise have been available for work.

[33] As my esteemed colleague explained well in *OK v Canada Employment Insurance Commission*, "the 'otherwise available' analysis doesn't require the application of the *Faucher* test."<sup>23</sup>

[34] In another decision given by the same member, the Appeal Division upheld a General Division decision that refused to apply the three *Faucher* factors in the context of sickness benefits.<sup>24</sup> The General Division refused to apply an analysis of *Faucher* because it found that the claimant would have worked for her employer if she hadn't been injured. The Appeal Division said that, in light of such facts, the General Division didn't need to analyze or apply the *Faucher* factors.<sup>25</sup> In fact, the Appeal Division decided that once it was established that the claimant would have continued working for her employer if she hadn't injured herself, there was no need to consider the three *Faucher* factors:

- the claimant wanting to work
- her efforts to find work

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<sup>23</sup> See the Appeal Division decision *OK v Canada Employment Insurance Commission*, 2024 SST 111 at para 29.

<sup>24</sup> See the Appeal Division decision *Canada Employment Insurance Commission v HR*, 2025 SST 857.

<sup>25</sup> See the Appeal Division decision *Canada Employment Insurance Commission v HR*, 2025 SST 857 at paras 21 and 22.

- setting personal conditions that might unduly limit her going back to work<sup>26</sup>

[35] So, in applying section 18(1)(b) of the EI Act, it isn't always appropriate to apply the three *Faucher* factors. These factors can be helpful in determining whether someone would otherwise have been available for work if they hadn't been sick. But it isn't always necessary or appropriate, as in this case.

[36] Here, I find it useful to recall that in *Faucher*, the Federal Court of Appeal noted that **the claimant's availability is an issue of fact** that is usually resolved by weighing the evidence.<sup>27</sup> So, I will look at the evidence that was before the General Division.

[37] The Claimant is a welder-fitter. At the time of the General Division hearing, he had been working for the same employer for 31 years.<sup>28</sup> He testified that in the past, he could work 32 to 40 hours a week, or even 60 hours a week.<sup>29</sup> But because the work is very physically demanding, he started working part-time as of June 2024—since he was 65 years old.<sup>30</sup> At the time of the General Division hearing, he was 67. He said that he cut back his work hours to about two days a week because he was older and at age 67, his work as a welder-fitter was harder.<sup>31</sup>

[38] The evidence on file shows that the Claimant worked regularly for his employer until he had trauma to both eyes.<sup>32</sup> A doctor put him on leave from work from March 28, 2025, to April 25, 2025. The Claimant told the Commission that he went back to work from April 26 to May 14, 2025.<sup>33</sup> Then, the medical certificates show that he wasn't able to work for medical reasons from May 14 to July 10, 2025.<sup>34</sup>

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<sup>26</sup> See the Appeal Division decision *Canada Employment Insurance Commission v HR*, 2025 SST 857 at para 21.

<sup>27</sup> See the Federal Court of Appeal decision *Faucher v Canada Employment and Immigration Commission*, A-56-96/A-57-96.

<sup>28</sup> Listen to the General Division hearing recording at 17:10.

<sup>29</sup> Listen to the General Division hearing recording at 13:45.

<sup>30</sup> See Service Canada's notes at GD3B-19.

<sup>31</sup> See Service Canada's notes at GD3B-19.

<sup>32</sup> See the medical certificate at GD3A-15.

<sup>33</sup> See the notes about a phone call at GD3B-17.

<sup>34</sup> See the medical certificates at GD3B-27 and GD3B-28.

[39] The Claimant testified at the General Division hearing that he went back to work on July 10, 2025.<sup>35</sup>

[40] So, the evidence shows that the Claimant wasn't able to work for a few weeks because he was injured and for medical reasons. The evidence shows that he was working until he had the eye trauma. His Record of Employment shows that he was working until March 28, 2025, when he was put on leave from work.<sup>36</sup> He tried to go back to work for two weeks, but his doctor put him back on leave from work.<sup>37</sup> He said he had post-traumatic shock because he almost lost both of his eyes.<sup>38</sup> He testified that he was bleeding in one eye and that he lost a lot of weight.<sup>39</sup> He went back to work as soon as his medical leave ended. That was the week after July 10, 2025, the day his medical leave ended.

[41] The evidence is clear—the only reason the Claimant wasn't able to work was because of an injury or sickness. It all lasted only a few weeks. We should not complicate issues that don't need to be complicated. The Claimant didn't work for a few weeks because he had eye trauma and post-traumatic shock from this injury. As soon as he was better, he went back to work for the same employer, who has employed him for 31 years. It also seems clear from the facts of the file that the Claimant would have worked for his employer if he hadn't had eye trauma and post-traumatic shock that followed. The evidence shows that he was working just before he was injured, and right after he was better.

## **Conclusion**

[42] The appeal is allowed. The General Division failed to use its jurisdiction. I have given the decision that should have been given.

[43] The Claimant is entitled to EI sickness benefits from March 28 to April 25, 2025, and from May 14 to July 10, 2025, inclusive. He has shown that he wasn't able to work

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<sup>35</sup> Listen to the General Division hearing recording at 20:00.

<sup>36</sup> See the Record of Employment at GD3B-14.

<sup>37</sup> Listen to the General Division hearing recording at 9:20.

<sup>38</sup> Listen to the General Division hearing recording at 9:30.

<sup>39</sup> Listen to the General Division hearing recording at 9:40.

because of an injury or illness, and otherwise would have been available for work during that period.

[44] The Claimant isn't entitled to sickness benefits from April 28 to May 9, 2025, because he didn't provide a medical certificate and worked during that period.

Elsa Kelly-Rhéaume  
Member, Appeal Division