



Citation: *JM v Canada Employment Insurance Commission*, 2026 SST 170

**Social Security Tribunal of Canada
Appeal Division**

Leave to Appeal Decision

Applicant: J. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated February 11, 2026
(GE-25-3041)

Tribunal member: Stephen Bergen

Decision date: March 9, 2026

File number: AD-26-146

Decision

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

Overview

[2] J. M. is the Applicant. This application is about his claim for Employment Insurance (EI) benefits, so I will call him the Claimant. The Respondent is the Canada Employment Insurance Commission, which I will call the Commission.

[3] The Claimant's last day of work was March 24, 2024, but he did not apply for EI benefits until April 24, 2025. By the time he applied, he no longer had enough hours of insurable employment to qualify for benefits.

[4] The Claimant asked the Commission to treat his application as though he had made it on March 24, 2024. This is called "antedating" the claim. However, the Commission refused to antedate, saying that he did not have good cause for the delay. The Claimant asked the Commission to reconsider but it would not change its decision.

[5] Next, the Claimant appealed to the General Division of the Social Security Tribunal. The General Division agreed with the Commission that the Claimant did not have good cause for the delay. It dismissed his appeal. Now the Claimant is asking for leave to appeal the decision of the General Division.

[6] I am refusing leave to appeal. The Claimant has not made out an arguable case that the General Division acted in a way that was procedurally unfair, or made any other error that I can consider.

Issue

[7] Is there an arguable case that the General Division made an error of procedural fairness?

[8] Is there an arguable case that the General Division made a different error?

I am not giving the Claimant permission to appeal

General Principles for applications for permission to appeal

[9] 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.

[10] 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

[11] 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

Procedural fairness

[12] The Claimant did not select any of the grounds for appeal, because he applied to the Appeal Division using the incorrect form.

[13] However, he said that he was appealing on the "grounds of basic fairness and human decency." He repeated the argument he made to the General division that he had delayed his application because he considered it wrong to draw EI benefits at the same time as he was receiving income through a severance package from his employer.

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.

[14] There is no arguable case that the General Division made an error of procedural fairness.

[15] 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.

[16] I cannot consider whether the law itself is fair or whether the Claimant was treated fairly by the Commission. I can only consider arguments that the **General Division** acted in a way that was **procedurally** unfair.

[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.

[18] The Claimant did not say that the General Division did not give him a fair chance to present his case at his hearing, or to respond to the Commission's case. He has not complained that the General Division member was biased or that he had already prejudged the matter.

[19] When I read the decision and review the appeal record, I do not see that the General Division did anything, or failed to do anything, that causes me to question the fairness of the process.

Other errors

[20] The Claimant did not argue that the General Division made any other error. However, he is unrepresented. He may not have known how best to argue his case.

[21] The Federal Court has instructed the Appeal Division to look beyond the grounds of appeal identified by unrepresented applicants, at the leave to appeal stage.³ So, I reviewed the record to see if the General Division may have ignored or misunderstood evidence that could have been relevant and important to its decision. I did not discover an arguable case that it did so.

³ *Karadeolian v. Canada (Attorney General)*, 2016 FC 615.

– **Error of fact**

[22] None of the essential facts are disputed.

[23] The General Division understood the Claimant's evidence that he deferred his application for benefits because he was receiving severance income. He had no other reason for the delay.

[24] The General Division recognized that the Claimant had been diagnosed with a serious medical condition and that he was helping to care for his sick parents. But the Claimant acknowledged that these other factors did not affect his ability to apply for benefits.

– **Error of law**

[25] There is also no arguable case that the General Division made an error of law.

[26] The law says that a claimant may only obtain an antedate if they have good cause for delaying their application for benefits throughout the entire period of the delay.⁴ As stated by the General Division, the courts have said that a claimant must act as a reasonable and prudent person would act in similar circumstances.⁵ It also says that a claimant must show that they took reasonably prompt steps to understand their entitlement to benefits and obligations under the law, or show that their failure to do so was justified by exceptional circumstances.⁶

[27] These are correct statements of law. The General Division considered whether the Claimant acted reasonably and prudently in his circumstances. It did not need to analyze whether the Claimant's 11-month delay was "reasonably prompt," since he acknowledged that he knew he should have applied for benefits when he was let go.

[28] I also note that the Federal Court of Appeal has considered whether receiving a severance package may be good cause for delaying an application for EI benefits. In

⁴ See section 10(4) of the EI Act.

⁵ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336.

⁶ See *Canada (Attorney General) v. Albrecht*, [1985] 1 F.C. 170; *Canada (Attorney General) v Kokavec*, 2008 FCA 307; *Paquette v Canada (Attorney General)*, 2006 FCA 309.

one decision, the Court found that the claimant did not have good cause, stating that it is not good cause for a claimant “to wait until they are ready to make a claim.”⁷ In another case, the Court considered the “good faith” motives of the claimant. The Claimant delayed his application even after he exhausted his severance pay. He explained that he did not want a handout. The Court said that “good faith reliance on one’s own resources does not constitute good cause.”⁸

[29] The EI Act, and the court decisions that interpret its application, are binding on the General Division. The General Division had to apply the law.

[30] The Claimant’s appeal has no reasonable chance of success.

Conclusion

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

Stephen Bergen
Member, Appeal Division

⁷ *Shebib v Canada (Attorney General)*, 2003 FCA 88.

⁸ *Howard v Canada (Attorney General)*, 2011 FCA 116.