



Citation: *EW v Canada Employment Insurance Commission*, 2026 SST 158

Social Security Tribunal of Canada Appeal Division

Extension of Time and Leave to Appeal Decision

Applicant: E. W.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated October 3, 2025
(GE-25-2585)

Tribunal member: Solange Losier

Decision date: March 4, 2026

File number: AD-26-85

Decision

[1] An extension of time to apply to the Appeal Division is granted. Leave (permission) to appeal is refused. The appeal will not proceed.

Overview

[2] E. W. is the Claimant. He applied for Employment Insurance regular benefits.

[3] The Canada Employment Insurance Commission (Commission) decided that he hadn't proven his availability for work.¹ A disentitlement to benefits was imposed.²

[4] The General Division concluded the same and dismissed his appeal. Because of that, he couldn't get benefits.³

[5] The Claimant is now asking for permission to appeal. He argues that the General Division made jurisdictional error, legal and important factual errors.⁴

[6] I am denying permission to appeal because the Claimant's arguments don't show that he has an arguable case upon which the appeal might succeed. So, I can't give him permission to appeal.⁵

Preliminary matters

I wrote to the Claimant to ask him for more information about his application

[7] I wrote to the Claimant to ask him to provide more information about his application to the Appeal Division. I noted that his application looked like it may have been filed late and if so, to provide a reasonable explanation. I also asked him to

¹ See Commission's reconsideration decision at page GD3-28.

² See sections 18(1) and 50 of the *Employment Insurance Act* (EI Act).

³ See General Division decision at pages AD1B-1 to AD1B-8.

⁴ See pages AD1C-5 to AD1C-6.

⁵ See section 58(2) of the *Department of Employment and Social Development Act* (DESD Act).

identify the errors he thinks the General Division made and to explain with reasons. The deadline to respond was March 2, 2026.⁶ The Claimant replied by the deadline.⁷

I am not accepting the new evidence submitted by the Claimant

[8] New evidence is evidence that the General Division did not have before it when it made its decision. The Appeal Division generally does not accept new evidence.⁸ This is because the Appeal Division isn't the fact finder or rehearing the case. It is a review of the General Division's decision based on the same evidence.⁹

[9] There are some exceptions where new evidence is allowed, including general background information, if it highlights findings made without supporting evidence, or shows that the Tribunal acted unfairly.¹⁰

[10] I find that the Claimant submitted new evidence that was not before the General Division. The new evidence included text messages, various emails, documents from legal proceedings, an updated security license, and pictures of his prescriptions, etc. This evidence was not before the General Division.

[11] I am not accepting the Claimant's new evidence because it isn't general background information and does not meet any of the other exceptions either. This means I can't consider the Claimant's new evidence when making my decision.

The Claimant asked the Tribunal to expedite the review of his application

[12] On February 27, 2026, the Claimant called the Tribunal to ask them to expedite his file due to financial hardship. I waited for the deadline of March 2, 2026 to pass first.¹¹ I then expedited the review of his application and my decision.

⁶ See Tribunal letter dated February 17, 2026.

⁷ See pages AD1C-1 to AD1C-17, AD1D-1, AD1E-1 to AD1E-7 and AD1F-1 to AD1F-2.

⁸ See *Tracey v Canada (Attorney General)*, 2015 FC 1300 at paragraphs 29 and 34, *Parchment v Canada (Attorney General)*, 2017 FC 354 at paragraph 23.

⁹ See *Gittens v Canada (Attorney General)*, 2019 FCA 256 at paragraph 13.

¹⁰ See *Sharma v Canada (Attorney General)*, 2018 FCA 48 and *Sibbald v Canada (Attorney General)*, 2022 FCA 157.

¹¹ March 2, 2026 was deadline set out for him to reply to my request for additional information.

Issues

[13] The issues in this appeal are:

- a) Was the application to the Appeal Division late?
- b) Should I extend the time for filing the application?
- c) Is there an arguable case that the General Division made any jurisdictional legal and important factual errors when it decided that he hadn't proven he his availability for work?

Analysis

The application to the Appeal Division was late

[14] The deadline to file an application to the Appeal Division is 30 days after the day on which the General Division decision was communicated to him in writing.¹²

[15] The General Division issued its decision on October 3, 2025. The Claimant wrote that he got it on the same date.¹³

[16] The Tribunal received an email on February 5, 2026, indicating that he wanted to appeal the General Division's decision.¹⁴ The Claimant's application to the Appeal Division was late because it was more than 30 days after the day the General Division decision was communicated to him. The Claimant doesn't dispute the lateness.¹⁵

I am extending the time for filing the application

[17] When deciding whether to grant an extension of time, I have to consider whether the Claimant has a reasonable explanation for why the application is late.¹⁶

¹² See section 57(1)(a) of the DESD Act.

¹³ See pages AD1C-2 to AD1C-3.

¹⁴ The Claimant didn't initially fill out the Application to the Appeal Division, but he did submit one later on February 17, 2025, at pages AD1C-1 to AD1C-17.

¹⁵ See page AD1-1.

¹⁶ It says this in section 27(2) of the *Social Security Tribunal Rules of Procedure*.

[18] The Claimant provided an explanation for his late application. He says there were exceptional circumstances at the time because he was dealing with other legal proceedings. He was also stressed, anxious and not sleeping, which affected his concentration, alertness and mental health.¹⁷

[19] I find that the Claimant has provided a reasonable explanation for the delay in filing his application to the Appeal Division, so I am allowing him more time to appeal.¹⁸

The test for getting permission to appeal

[20] I can consider four types of errors, and they include a failure to follow a fair process, jurisdictional, legal, and important factual errors.¹⁹ I can only give the Claimant permission to appeal if there's an "arguable case" that the General Division made an error that gives his appeal a reasonable chance of success.²⁰

[21] The Claimant set out his reasons for appealing and submitted a number of documents to the Appeal Division.²¹ I've reviewed his arguments and considered them, with the exception of new evidence as noted above.

I am not giving the Claimant permission to appeal

There is no arguable case that the General Division made any jurisdictional errors

[22] The Claimant hasn't pointed out how the General Division made a jurisdictional error. Even so, I reviewed the file record and decision to see whether there was an arguable case that it made such an error.

[23] The General Division's jurisdiction to decide an issue comes from a reconsideration decision that has been appealed to the Tribunal.²²

¹⁷ See pages AD1C-5 to AD1C-6.

¹⁸ See section 27(2) of the SST Rules.

¹⁹ See section 58(1) of the DESD Act.

²⁰ See *Osaj v Canada (Attorney General)*, 2016 FC 11 at paragraph 12 and sections 56(1) and 58(2) of the DESD Act.

²¹ See pages AD1-1 to AD1-9, AD1A-1 to AD1A-17, AD1C-1 to AC1C-17, AD1D-1, AD1E-1 to AD1E-7 and AD1F-1 to AD1F-2.

²² See sections 112 and 113 of the EI Act.

[24] The Commission's reconsideration decision, issued on September 3, 2025, decided that the Claimant wasn't entitled to get benefits because he hadn't proven his availability for work.²³

[25] This means that the only issue before the General Division was whether the Claimant had proven his availability for work.²⁴

[26] The General Division only decided the issues it had the power to decide and didn't decide any issues it had no power to decide. It only dealt with his availability for work. There is no arguable case that the General Division made any jurisdictional errors in its decision.²⁵

There is no arguable case that the General Division made any legal errors

[27] The General Division makes a legal error when it misinterprets the law or uses an incorrect legal test.

[28] The Claimant hasn't pointed out how the General Division made any legal errors. I reviewed the file record and decision to see whether there was an arguable case that it made such an error.

[29] The General Division correctly stated the law in its decision when it dealt with his availability for work. It referred to relevant case law as well.²⁶ There is no arguable case that the General Division made any legal errors in its decision.²⁷

There is no arguable case that the General Division made any important factual errors

[30] The General Division first considered what suitable work was for the Claimant.²⁸ It found that suitable work for the Claimant included a variety of entry-level positions in

²³ See pages GD3-28.

²⁴ The Commission's arguments to the General Division did identify that there was another decision dealing with a disqualification to benefits due to "misconduct", but it wasn't part of this appeal, see page GD4-1.

²⁵ See section 58(1)(a) of the DESD Act.

²⁶ See paragraphs 9–11, 14–15, 20–21, 26–27 and 31 of the General Division decision.

²⁷ See section 58(1)(b) of the DESD Act.

²⁸ See section 9.002(1) of the *Employment Insurance Regulations* (EI Regulations).

other fields. It noted that while he had many years of security experience, he didn't have a security license at that time.²⁹

[31] The General Division then considered whether the Claimant had made reasonable and customary efforts to find a job.³⁰ It found that the Claimant hadn't shown he made a sustained effort to find a suitable job. It explained that he had only applied to four jobs in a five-month period and that he didn't update his resume or sign up for online job search tools. And he didn't make any efforts to expand his job search.³¹

[32] The General Division then looked at whether he was capable and available for work. It considered the three factors set out in case law.³² It decided that he had shown he wanted to go back to work as soon as a suitable job was available but hadn't made enough effort to find a suitable job.³³

[33] It also found that he had set personal conditions that might unduly limit his chances of going back to work. It found that he limited his job searches to construction and Uber driving especially since he wasn't qualified to work in construction and the age of his car eliminated the option of being an Uber driver.³⁴

[34] The General Division concluded that the Claimant hadn't shown he was capable of and available for work and unable to find a suitable job.³⁵ Because of that, he was not entitled to get benefits.³⁶

[35] The Claimant's main arguments to the Appeal Division are focused on re-arguing his case because he wants it reconsidered.³⁷ Having exceptional circumstances doesn't excuse him from having to prove that he was available for work during the relevant

²⁹ See paragraph 19 of the General Division decision.

³⁰ See section 50(8) of the EI Act and section 9.001 of the EI Regulations.

³¹ See paragraphs 24–25 of the General Division decision.

³² See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96 and section 18(1) of the EI Act.

³³ See paragraphs 28 and 30 of the General Division decision.

³⁴ See paragraphs 35 and 39 of the General Division decision.

³⁵ See paragraph 40 of the General Division decision.

³⁶ See paragraph 41 of the General Division decision.

³⁷ See page AD1C-7 for a summary of his main points.

period. The remainder of his arguments all relate to new evidence that was not before the General Division, so I can't consider them.

[36] The Appeal Division has a limited mandate.³⁸ The General Division is the trier of fact, and it was free to conclude, based on the evidence before it, that he had not shown he was available for work. I can't intervene in order to settle a disagreement about the application of settled legal principles to the facts of a case.³⁹ So, I can't reweigh the evidence in order to come to a different conclusion for the Claimant.

[37] The General Division had to decide whether he had proven he was available for work, based on the *Employment Insurance Act*, *Employment Insurance Regulations* and relevant case law. It's key findings about his availability for work are consistent with the evidence. I reviewed the file, examined the decision under appeal and didn't find any key evidence that the General Division might have ignored or misinterpreted.⁴⁰

[38] There is no arguable case that the General Division made any important factual errors when it decided that he had failed to prove his availability for work and hadn't made reasonable and customary efforts to find suitable employment.⁴¹

Conclusion

[39] There are no other reasons for giving the Claimant permission to appeal.

[40] An extension of time is granted. Permission to appeal is refused. This means that the appeal will not proceed. It has no reasonable chance of success.

Solange Losier
Member, Appeal Division

³⁸ See section 58(1) of the DESD Act and *Marcia v Canada (Attorney General)*, 2016 FC 16 at paragraph 34.

³⁹ See *Garvey v Canada (Attorney General)*, 2018 FCA 118 at paragraphs 7–11 and *Quadir v Canada (Attorney General)*, 2018 FCA 21 at paragraph 14.

⁴⁰ The Federal Court has recommended such a review in decision called *Karadeolian v Canada (Attorney General)*, 2016 FC 165 at paragraph 10.

⁴¹ See section 58(1)(c) of the DESD Act.