



[TRANSLATION]

Citation: *AP v Canada Employment Insurance Commission*, 2026 SST 227

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

<b>Applicant:</b>	A. P.
<b>Representative:</b>	Gabriel Pelletier (counsel), Comité Chômage de Montréal [Montreal unemployment committee]
<b>Respondent:</b>	Canada Employment Insurance Commission
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<b>Decision under appeal:</b>	General Division decision dated February 5, 2026 (GE-25-3086)
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<b>Tribunal member:</b>	Elsa Kelly-Rhéaume
<b>Decision date:</b>	March 23, 2026
<b>File number:</b>	AD-26-131

## Decision

[1] Permission to appeal is refused. The appeal won't go ahead.

## Overview

[2] The Claimant, A. P., applied for Employment Insurance (EI) regular benefits.<sup>1</sup> She said that she had to take leave without pay because she was running in the federal election.<sup>2</sup>

[3] The Canada Employment Insurance Commission (Commission) decided that it could not pay the Claimant benefits from March 24, 2025, to April 28, 2025. That was because she voluntarily took leave from work without just cause.<sup>3</sup> The Commission also decided that she wasn't entitled to receive benefits for the period from April 29 to May 5, 2025. That was because she was on vacation and so wasn't available for work.<sup>4</sup>

[4] The Claimant asked for that decision to be reconsidered. She wrote that she didn't take leave voluntarily but had to do so to take part in the election.<sup>5</sup> She said that she would rather have kept working while running as an election candidate.

[5] The Commission upheld its decisions on both issues—the leave from work and not being available for work.<sup>6</sup> It decided that the Claimant wasn't entitled to benefits from March 26, 2025, to May 5, 2025.

[6] The Claimant appealed the decision to the General Division. It dismissed her appeal. It decided that she wasn't entitled to receive benefits because she voluntarily took leave from work without just cause, and that this wasn't the only reasonable alternative.<sup>7</sup> It also decided that she wasn't available for work.<sup>8</sup>

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<sup>1</sup> See the benefit claim at GD3-7.

<sup>2</sup> See the benefit claim at GD3-8.

<sup>3</sup> See the notice of decision at GD3-20.

<sup>4</sup> See the notice of decision at GD3-20.

<sup>5</sup> See the reconsideration request at GD3-23.

<sup>6</sup> See the notice of decision at GD3-30.

<sup>7</sup> See the General Division decision at AD1A-2 at para 2.

<sup>8</sup> See the General Division decision at AD1A-2 at para 3.

[7] The Claimant is now asking the Appeal Division for permission to appeal. The Appeal Division can hear an appeal on the merits only if permission to appeal is given.<sup>9</sup> I am not giving permission to appeal for the following reasons.

## Issues

[8] The issues are as follows:

- a) Is there an arguable case that the General Division made an error of law?
- b) Is there an arguable case that the General Division based its decision on an important error of fact?

## I am not giving the Claimant permission to appeal

### The legal test for giving permission to appeal

[9] I can only give permission to appeal if the Claimant raises arguable grounds that could allow her to succeed.<sup>10</sup> I have to refuse permission to appeal if I am satisfied that the appeal has no reasonable chance of success.<sup>11</sup> A reasonable chance of success means that the Claimant could argue her case and possibly succeed.

[10] The appeal has to relate to one of the grounds of appeal set out in the *Department of Employment and Social Development Act* (DESD Act). This means that I have to decide whether there is an arguable case that the General Division:

- failed to follow the principles of procedural fairness
- made an error of jurisdiction
- made an error of law

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<sup>9</sup> See section 56(1) of the *Department of Employment and Social Development Act* (DESD Act).

<sup>10</sup> See *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12.

<sup>11</sup> See section 58(2) of the DESD Act.

- based its decision on an important error of fact<sup>12</sup>

[11] So, I have to give permission to appeal if the General Division may have made one of these errors and whether that error would give the Claimant's appeal a reasonable chance of success.

[12] To give my decision, I looked at the administrative file that was before the General Division, listened to the hearing recording, read the General Division decision, and carefully reviewed the Claimant's application to the Appeal Division and the arguments made in support of it.<sup>13</sup>

### **The Appeal Division can't intervene on issues of mixed fact and law**

[13] The Claimant argues that the General Division made an error of law by finding that taking leave without pay wasn't the only reasonable alternative.<sup>14</sup>

[14] First, I have to point out that this alleged error isn't an error of law. An error of law happens when the General Division applies the wrong legal test or doesn't consider all the elements that a legal test requires. But applying a settled legal test to the facts of a case is an issue of mixed fact and law.<sup>15</sup>

[15] In a similar case, where a claimant denied that she voluntarily left her job without just cause, the Federal Court of Appeal said that the Social Security Tribunal had applied the correct legal test to decide whether the claimant was entitled to benefits. It had to decide whether she had no other reasonable alternatives but to leave her job when she did, in the circumstances.<sup>16</sup> The Federal Court of Appeal noted that this matter can be considered an issue of mixed fact and law.<sup>17</sup>

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<sup>12</sup> See section 58(1) of the DESD Act.

<sup>13</sup> See the Claimant's arguments at AD1B-2 and following.

<sup>14</sup> See the application to the Appeal Division at AD1-4.

<sup>15</sup> See *Sekitoreko v Canada (Attorney General)*, 2026 FC 249 at para 27.

<sup>16</sup> See *Chemouny v Canada (Attorney General)*, 2015 FCA 48.

<sup>17</sup> See *Chemouny v Canada (Attorney General)*, 2015 FCA 48 at para 6.

[16] The Appeal Division can't intervene on an issue of this nature unless an issue of law can be identified or an important error of fact has been made.<sup>18</sup> In the Claimant A. P.'s case, no issue of law can be identified. The Claimant hasn't shown that the General Division may have made an important error of fact.

– **There is no arguable case that the General Division applied the wrong legal test**

[17] The Claimant hasn't shown any arguable ground that the General Division applied the wrong legal test or applied the legal test incorrectly. It applied section 32(1) of the *Employment Insurance Act* (EI Act). That provision says that a claimant who voluntarily takes a period of leave from their employment without just cause isn't entitled to receive benefits if the period of leave was authorized by the employer and a return-to-work date was agreed to. The General Division also applied section 29(c) of the EI Act. That provision says that all the circumstances have to be considered to determine whether the Claimant had just cause for taking leave.

– **There is no arguable case that the General Division based its decision on an important error of fact**

[18] The Claimant argued before the General Division that she had to take leave without pay and repeated this argument before the Appeal Division. In its decision, the General Division wrote that the Claimant said her employer had threatened to reduce her work hours. So, she had no choice but to take leave without pay.<sup>19</sup> She argues before the Appeal Division that she never said her employer had threatened her, but that she was [translation] "forced" to choose between part-time work or leave without pay.<sup>20</sup>

[19] Before the Appeal Division, the Claimant argues that she never claimed her employer threatened her and that, as a result, the General Division erred in how it assessed the facts. Yet I note that it was in fact the Claimant who raised the issue of

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<sup>18</sup> See *Page v Canada (Attorney General)*, 2023 FCA 169 at para 80.

<sup>19</sup> See the General Division decision at AD1A-4 at para 19.

<sup>20</sup> See the Claimant's arguments at AD1B-7 at para 13.

having been [translation] “threatened.” Also, in her arguments before the General Division, it was written that her employer [translation] “backed her into a corner by threatening to reduce her hours by a lot if she didn’t agree to take leave without pay ...”<sup>21</sup> So, it is surprising that she is now criticizing the General Division for having considered her own argument that she had been threatened.

[20] There is no arguable case that the General Division made findings of fact in a perverse or capricious manner. It considered the Claimant’s position. But it found that the employer supported the Claimant in her efforts.<sup>22</sup> It also found that she wasn’t threatened with having her work hours reduced.<sup>23</sup>

[21] The General Division decided that the Claimant voluntarily took leave without pay. The Claimant argues before the Appeal Division that she never asked for leave without pay.<sup>24</sup> But the evidence supports the General Division’s finding that she voluntarily took leave without pay. The evidence on file shows that she herself filled out and signed a **request** for leave without pay with her employer.<sup>25</sup> Also, at the hearing, her counsel asked her the following question: [translation] “In the end, **what was chosen** was leave without pay—why?” She testified that it was because she knew that if she went to part-time work under conditions that weren’t very clear in terms of hours, she would not have access to an alternative source of income like EI.<sup>26</sup> So, the evidence supports the General Division’s finding, and I can’t intervene.

[22] There is no arguable case that the General Division overlooked important evidence or made findings of fact that the evidence clearly contradicts. The General Division considered all of the evidence on file. It said that it reviewed the file, heard the

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<sup>21</sup> See the Claimant’s arguments before the General Division at GD10-3 at para 4.

<sup>22</sup> See the General Division decision at AD1A-6 at para 23.

<sup>23</sup> See the General Division decision at AD1A-7 at para 30.

<sup>24</sup> See the Claimant’s arguments before the Appeal Division at AD1B-3 at para 3(e).

<sup>25</sup> See the request for leave without pay at GD2-43.

<sup>26</sup> Listen to the General Division hearing recording at 20:50.

Claimant, and considered the parties' submissions, before finding that the Claimant voluntarily took leave without pay.<sup>27</sup>

### **There is no arguable case that the General Division made errors of law**

#### **– There is no arguable case that the General Division's reasons are inadequate**

[23] The Claimant argues that the General Division contradicted itself by saying a reasonable alternative would have been for the Claimant to work part-time when, at the same time, it decided that the reduced hours and earnings justified the leave without pay.<sup>28</sup>

[24] Inadequate reasons can constitute an error of law. But the Claimant seems to have misunderstood the General Division decision.

[25] The General Division didn't decide that the reduced work hours justified the leave without pay. On the contrary, the General Division wrote at paragraph 27 of its decision that the Claimant **didn't have just cause for taking leave without pay** because of her reduced work hours.<sup>29</sup> The General Division noted that her employer offered her part-time work during the election campaign. It found that she refused to work part-time because that would provide a lower income than EI benefits.<sup>30</sup> It reiterated at paragraph 29 of its decision that it didn't accept her argument that she had just cause for taking leave without pay because of her reduced work hours.<sup>31</sup> The last sentence of paragraph 29 said that the reduced work hours would be a major change to her pay conditions. It seems to refer to the argument the Claimant raised rather than to the General Division's finding.

[26] To explain why the Claimant didn't have just cause for taking leave without pay because of her reduced work hours, the General Division correctly noted that **the**

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<sup>27</sup> See the General Division decision at AD1A-4 at para 16.

<sup>28</sup> See the application to the Appeal Division at AD1-4.

<sup>29</sup> See the General Division decision at AD1A-6.

<sup>30</sup> See the General Division decision at AD1A-6 at para 27.

<sup>31</sup> See the General Division decision at AD1A-7 at para 29.

**Claimant caused her unemployment situation.**<sup>32</sup> That was because she could have worked part-time for the same employer but instead chose not to work at all and to go back to EI. But the Federal Court said that the EI Act “has the goal of ensuring the safety of citizens **by offering assistance to individuals who have lost their employment** and by helping unemployed persons return to work.” The Federal Court explained that this is why someone can’t receive benefits if they take a period of leave voluntarily and without just cause.<sup>33</sup>

[27] In this case, the General Division found that it would have been a reasonable alternative to accept part-time work during the election campaign instead of choosing to take leave without pay and leaving herself with no income. There is no arguable case that the General Division gave reasons that weren’t logical or consistent.

– **The General Division didn’t have to decide whether it was appropriate for the employer to allow the Claimant to work full-time**

[28] The Claimant claims in her application and arguments before the Appeal Division that the General Division made an error of law in its interpretation of the *Public Service Act* (PSA). She criticizes the General Division for having decided that her employer could not allow her to work full-time while she was running for a party in the federal election.<sup>34</sup>

[29] But that isn’t what the General Division decided. It wrote that the PSA doesn’t say that a public servant can keep working while being a candidate in an election.<sup>35</sup> That was in response to the Claimant’s argument that she should have been allowed to keep working full-time while running as a candidate in the federal election.

[30] The General Division didn’t have to decide what the employer could or could not allow the Claimant to do under a provincial law. It correctly noted this in its decision. It explained that its role wasn’t to interpret the rules that applied to labour relations for

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<sup>32</sup> See the General Division decision at AD1A-7 at para 28.

<sup>33</sup> See *Bossé v Canada (Attorney General)*, 2019 FC 137 at para 28.

<sup>34</sup> See the application to the Appeal Division at AD1-4.

<sup>35</sup> See the General Division decision at AD1A-6 at para 26.

Quebec public servants.<sup>36</sup> It also noted that she would have to find another remedy if she believed that her employer had misinterpreted the PSA.<sup>37</sup> The General Division is responsible for applying the EI Act and gets its authority from the DESD Act. It isn't responsible for interpreting the PSA. It also isn't responsible for reviewing an employer's behaviour.

[31] The General Division wrote that it wanted to address the Claimant's arguments. The undisputed facts on file are that the Claimant's employer, the Government of Quebec, told her that she could not work full-time during the election campaign. That was the Quebec government's interpretation of the PSA. The Claimant testified before the General Division that her employer told her it wasn't possible for her to keep her full-time working conditions.<sup>38</sup> She said that her employer offered her leave without pay or leave with partial pay. Leave with partial pay meant reducing the number of work hours.<sup>39</sup>

[32] The General Division said at paragraph 13 of its decision that the Claimant had these two options if she wanted to run in the federal election while employed by the Quebec government.<sup>40</sup> The General Division noted that the employer tried to find a compromise to allow the Claimant to run as a candidate in the election.

[33] So, there is no arguable case that the General Division made an error of law. Deciding whether the leave without pay was taken voluntarily didn't require a legal interpretation of the PSA.

– **There is no arguable case that the General Division made an error of law by limiting its analysis of the Claimant's availability to the fact that she could have kept her job if she worked part time**

[34] Even though the General Division disentitled the Claimant from receiving benefits under section 32(1) of the EI Act, the Commission also decided that she wasn't entitled

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<sup>36</sup> See the General Division decision at AD1A-5 at para 22.

<sup>37</sup> See the General Division decision at AD1A-7 at para 30.

<sup>38</sup> Listen to the General Division hearing recording at 17:40.

<sup>39</sup> Listen to the General Division hearing recording at 18:08.

<sup>40</sup> See the General Division decision at AD1A-4.

to benefits because she wasn't available for work for the period from March 26 to May 5, 2025.<sup>41</sup> Section 18(1)(a) of the EI Act says that to be entitled to be paid benefits, the Claimant had to be capable of and available for work and unable to obtain suitable employment. Section 50(8) of the EI Act also says that a claimant has to prove that they are making reasonable and customary efforts to obtain suitable employment.<sup>42</sup>

[35] The General Division reviewed the Claimant's availability by applying those two statutory provisions.

[36] The legal test developed to determine availability under section 18(1)(a) involves applying the three factors set out in *Faucher*.<sup>43</sup> Based on settled case law on this matter, the General Division decided that the Claimant had to prove the following three points:

- She wanted to go back to work as soon as a suitable job was available.
- She was making efforts to find a suitable job.
- She didn't set personal conditions that unduly limited her chances of going back to work.<sup>44</sup>

[37] In her application and arguments to the Appeal Division, the Claimant didn't dispute that this was the correct legal test. Instead, the Claimant argued that the General Division's analysis was unduly limited to the fact that she could have kept her job even with the reduced hours.<sup>45</sup> She criticized the General Division for overlooking the evidence of her job-search efforts when it analyzed her availability.

[38] The Claimant hasn't shown that her argument has a reasonable chance of success. The General Division specifically considered the Claimant's job-search activities in its decision when analyzing her availability. It considered her testimony that

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<sup>41</sup> See the notice of decision at GD3-29.

<sup>42</sup> See the General Division decision at AD1A-8 at para 38 and following.

<sup>43</sup> See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

<sup>44</sup> See the General Division decision at AD1A-11 at para 50.

<sup>45</sup> See the Claimant's arguments at AD1B-5.

finding a job during the election campaign was her priority.<sup>46</sup> It noted at paragraph 44 of its decision that it considered her testimony that she had made some efforts to find a job.<sup>47</sup> But it found that employers were hesitant to hire her for a short period of time. In fact, she testified before the General Division that a potential employer told her she could not be hired because she would be leaving after three weeks.<sup>48</sup>

[39] The General Division also made it clear that it considered the Claimant's job-search activities at paragraph 54 of its decision. As part of its analysis of the second *Faucher* factor—the one dealing with efforts to find a suitable job—the General Division referred to the analysis it had already carried out in its decision of “reasonable and customary” efforts to find a job under section 9.001 of the *Employment Insurance Regulations* (EI Regulations).<sup>49</sup> The General Division said that it used the job-search activities listed in the EI Regulations as a reference.<sup>50</sup>

[40] The General Division wrote that the Claimant's efforts to find a job weren't enough.<sup>51</sup> It was open to the General Division to make that finding. There is no arguable case that the General Division made an error in law by not considering some elements of a legal test.

[41] Then, the General Division decided that the Claimant had set personal conditions that unduly limited her chances of going back to work. It found that she was looking for a temporary job while she was taking part in an election campaign.<sup>52</sup> The evidence on file supports this finding. The Claimant testified that she was looking for full-time work [translation] “that could be done in three weeks.”<sup>53</sup> She also said that she was looking

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<sup>46</sup> See the General Division decision at AD1A-9 at para 43.

<sup>47</sup> See the General Division decision at AD1A-10 at para 44.

<sup>48</sup> Listen to the General Division hearing recording at 27:55.

<sup>49</sup> See the General Division decision at AD1A-12.

<sup>50</sup> See the General Division decision at AD1A-12 at para 54.

<sup>51</sup> See the General Division decision at AD1A-12 at para 55.

<sup>52</sup> See the General Division decision at AD1A-12 at paras 56 and 57.

<sup>53</sup> Listen to the General Division hearing recording at 26:55.

for a former employer or someone who would have been happy to hire her for three weeks.<sup>54</sup>

[42] The General Division compared these personal conditions that the Claimant had set with the fact that she already had a job and that her employer would have allowed her to work part-time during her election campaign.<sup>55</sup> So, there is no arguable case that the General Division only considered her employer's offer to work part time.

### **Additional remarks**

[43] The Federal Court requires us to review the entire file to decide whether the General Division may have made errors other than those the Claimant alleged.<sup>56</sup> But the Court asks us to do this only when the claimant is self-represented.

[44] Because the Claimant is represented by counsel as part of this appeal, I don't need to assess whether the General Division may have made errors that the Claimant and her counsel didn't raise. I explained why I am satisfied that there are no arguable grounds that the errors alleged by the Claimant would give the appeal a reasonable chance of success.

[45] In conclusion, I note that the General Division decision is consistent with other administrative decisions about people applying for EI while running as election candidates. Even though that decision isn't binding, I find it relevant to mention a Canadian Umpire Benefit (CUB) decision with very similar facts.<sup>57</sup> A claimant said that her leave without pay wasn't voluntary because she needed to take leave from work to run as a candidate in an election. She argued that she wanted to stay in her job, but the law that applies to public servants required her to take leave during the election period. The decision-maker found that asking for leave without pay was still voluntary.

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<sup>54</sup> Listen to the General Division hearing recording at 27:10.

<sup>55</sup> See the General Division decision at AD1A-12 at para 57.

<sup>56</sup> See *Karadeolian v Canada (Attorney General)*, 2016 FC 615 at para 10.

<sup>57</sup> See CUB 17867.

[46] In another similar case, the General Division decided that a claimant who left her job to run as a candidate in an election had voluntarily left her job even though she had other options.<sup>58</sup> As a result, she was disentitled from receiving benefits.

## **Conclusion**

[47] Permission to appeal is refused. This means that the appeal won't go ahead.

Elsa Kelly-Rhéaume  
Member, Appeal Division

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<sup>58</sup> See *HW v Canada Employment Insurance Commission*, 2020 SST 453.