



Citation: *JL v Canada Employment Insurance Commission*, 2026 SST 210

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant: J. L.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated March 6, 2026
(GE-26-631)

Tribunal member: Stephen Bergen

Decision date: March 16, 2026

File number: AD-26-163

Decision

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

Overview

[2] J. L. is the Applicant. 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] After the Commission allocated the Claimant's Worker's Compensation benefits, it determined that it had overpaid his Employment Insurance benefits. So, it assessed an overpayment. The Claimant asked the Commission to write off the overpayment.

[4] On July 31, 2023, the Commission refused the Claimant's request. The Claimant sent the Commission a request for reconsideration sometime between August 18 and August 29, 2023.¹ In a September 18, 2023, conversation, the Commission confirmed with the Claimant that he was seeking a reconsideration of the write-off of his overpayment.² It sent him a decision letter to this effect the same day, confirming that it did not have authority to reconsider a write-off decision.³

[5] The Claimant submitted a second reconsideration request on October 16, 2025. This was a request to reconsider the September 2023 letter (which was already a reconsideration). In response, the Commission sent the Claimant a December 18, 2025, decision, saying that it could not reconsider because he was out of time to make the request.

[6] The Claimant appealed to the General Division of the Social Security Tribunal on February 23, 2026. He did not attach a decision to his appeal. Instead, he attached a January 23, 2026, Statement of Account.

¹ The request is dated August 18, but marked received by the Commission on August 29.

² See GD3-26.

³ See section 112.1 of the *Employment Insurance Act* (EI Act).

[7] The General Division understood the Claimant to be appealing the later December 18, 2025, reconsideration decision. The appeal was filed late, and the General Division did not grant the Claimant an extension. It did not accept that the Claimant had a reasonable explanation for the delay.

[8] The Claimant appealed the General Division decision to the Appeal Division.

[9] I am refusing permission to appeal. The Claimant has not made out an arguable case that the General Division made an error of law or fact.

Issues

[10] Is there an arguable case that the General Division made an error of law in how it decided not to grant the Claimant an extension of time?

[11] Is there an arguable case that the General Division made an error of fact by deciding that the Claimant had no reasonable explanation for the delay, without considering the “procedural context”?

I am not giving the Claimant permission to appeal

General Principles that apply to leave to appeal applications

[12] 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.

[13] 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.⁴

[14] 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.”⁵

[15] The Claimant did not use the usual form when he applied to the Appeal Division for permission to appeal. However, his application identifies three grounds of appeal. He argues that the General Division made an error of law. He also argues that it made an error of fact. And, he argues a third ground of appeal which I cannot consider. I will explain why later in my decision.

Error of law—misapplication of the extension of time test

[16] There is no arguable case that the General Division misapplied the extension of time test.

[17] The General Division considered whether the Claimant had a reasonable explanation for his delay. The Claimant argues that the General Division misapplied the legal test because it must consider other factors, in addition to whether he has a reasonable explanation. He says it must also consider

- whether there is a continuing intention to pursue the appeal
- whether the appeal has arguable merit
- whether the other party would suffer prejudice if the extension were granted.

⁴ 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).

⁵ See *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; and *Ingram v Canada (Attorney General)*, 2017 FC 259.

[18] I understand his confusion. The General Division referred to the *Reconsideration Request Regulations*. These regulations identify the four factors to which the Claimant refers.⁶

[19] However, there is a difference between what the General Division must consider when it reviews a late appeal and what the Commission considers when it reviews a late request to reconsider. The Commission must apply the factors in the *Reconsideration Request Regulations* when it reconsiders its own decisions.⁷

[20] But when the General Division decides whether to grant an extension for a claimant to file an appeal, it must only consider whether the claimant has a reasonable explanation for why they are late. It is not required to consider anything else.

Error of fact—failure to consider context

[21] There is no arguable case that the General Division made an error of fact.

[22] For the purposes of an appeal to the Appeal Division, the General Division makes an error of fact when it makes a finding of fact that ignores or misunderstands important and relevant evidence, or where its finding is not rationally connected to the evidence.⁸

[23] The Claimant argues that the General Division ignored evidence relevant to his continuing intention to appeal. However, “continuing intention” is not part of the test. The General Division needed only to consider evidence that was relevant to whether the Claimant’s explanation was reasonable.

[24] The General Division decision demonstrates that it understood the Claimant’s efforts to get a decision from the Commission. And it understood that the Claimant did not believe he had received a clear reconsideration decision.

⁶ See section 1 of the *Reconsideration Request Regulations*,

⁷ See section 27(2) of the *Social Security Tribunal’s Rules of Procedure* (Rules of Procedure).

⁸ This is a paraphrase. Section 58(1)(c) of the DESDA actually says that an error of fact is where the General Division “based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.”

[25] Nonetheless, the General Division decided that the Claimant's explanation was not reasonable. It based its decision on the fact that the December 18, 2025, decision stated the Commission's reason for denying his reconsideration request, and that it clearly stated he had 30 days to appeal to the Tribunal.

[26] The Claimant has not pointed to any piece of important and relevant evidence that the General Division ignored. He may disagree with how the General Division weighed the evidence, but the Appeal Division has no authority to step in to reweigh or re-evaluate the evidence.⁹

Other error—the General Division's assessment of the context was unreasonable

[27] The Claimant's third ground of appeal does not seem to fall within either an error of fact or of law, and it does not raise any of the other errors that I may consider.

[28] I cannot consider how the General Division weighed the evidence, including the context—as I have said. Nor can I interfere with the General Division's assessment of what a "reasonable explanation" looks like.

[29] The General Division applied settled law (in this case, the Rules of Procedure) to the facts and found that the Claimant does not have a "reasonable explanation." When it does this sort of thing, it is deciding what is called a "question of mixed fact and law." The Federal Court of Appeal has stated that the Appeal Division has no jurisdiction to decide questions of mixed fact and law.¹⁰

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

⁹ See, for example: *Hideq v Canada (Attorney General)*, 2017 FC 439, *Parchment v Canada (Attorney General)*, 2017 FC 354, *Johnson v Canada (Attorney General)*, 2016 FC 1254, *Marcia v Canada (Attorney General)*, 2016 FC 1367.

¹⁰ See *Quadir v Canada (Attorney General)*, 2018 FCA 21.

Conclusion

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

Stephen Bergen
Member, Appeal Division