



Citation: *JL v Canada Employment Insurance Commission*, 2026 SST 214

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: J. L.

Respondent: Canada Employment Insurance Commission
Representative: Julie Duggan

Decision under appeal: General Division decision dated September 17, 2025
(GE-25-2431)

Tribunal member: Stephen Bergen

Type of hearing: Videoconference
Hearing date: February 27, 2026
Hearing participants: Appellant
Respondent's representative

Decision date: March 18, 2026
File number: AD-25-672

Decision

[1] The appeal is allowed. The General Division made errors of jurisdiction and of fact. I am returning the matter to the General Division to reconsider.

Overview

[2] J. L. is the Appellant. 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] The Claimant injured his back on October 28, 2024. He was unemployed at the time, and in receipt of regular EI benefits. Several months later, he asked to have his regular benefits converted to sickness benefits, citing the disability arising from his October injury.

[4] The Commission responded by reconsidering the Claimant's entitlement to the regular benefits that he had received since the October 28 injury. The Commission decided that he was not entitled to those benefits because he had not proven he was available for work. The Claimant asked the Commission to reconsider, but it would not change its decision.

[5] The Claimant appealed to the General Division of the Social Security Tribunal, which upheld the Commission's decision and dismissed his appeal. The Claimant next appealed to the Appeal Division.

[6] I am allowing the appeal. The General Division made an error of jurisdiction and an error of fact. I am returning the matter to the General Division for reconsideration.

Issues

[7] The issues in this appeal are:

- a) Did the General Division make an error of jurisdiction by failing to consider whether the Commission acted judicially when it reconsidered the Claimant's benefits?
- b) Did the General Division make an error of fact by disregarding evidence of the Claimant's efforts to find employment?

Analysis

General legal principles for appeals to the Appeal Division

[8] The Appeal Division may only consider errors that fall within one of the following grounds of appeal:

- 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 made an error of law when making its decision.
- d) The General Division based its decision on an important error of fact.¹

The General Division did not consider whether the Commission reconsidered judicially

[9] The parties agree that the General Division should have considered whether the Commission acted judicially when it reconsidered benefits it had paid the Claimant.

[10] I also agree. The General Division failed to exercise its jurisdiction.

¹ This is a plain-language version of the three grounds. The full text is in section 58(1) of the *Department of Employment and Social Development Act* (DESDA).

[11] Whenever the Commission reconsiders paid benefits at its own initiative, it is making a discretionary decision under section 52 of the *Employment Insurance Act* (EI Act). All discretionary decisions must be made “judicially.”

[12] This means that the Commission must not act in bad faith or with an improper purpose. It must not act in a discriminatory manner. It must also consider all relevant factors and disregard irrelevant factors.

[13] The General Division did not decide whether the Commission acted judicially when it reconsidered the Claimant’s regular benefits, so it made an error of jurisdiction.

The General Division disregarded evidence of the Claimant’s job search

[14] The General Division’s decision that the Claimant was not available was based on its finding that he did not express his desire to return to work through his job search efforts.

[15] In support of that key finding, the General Division said that there was “no evidence” that the Claimant made any efforts to find work.²

[16] That plainly misstates the evidence.

[17] Job search efforts are not limited to specific job inquiries, applications, or interviews. The *Employment Insurance Regulations* (Regulations) identify a broad scope of job search efforts that may be considered. Assessing employment opportunities, and registering for job search tools, or with electronic job banks, are among the efforts described.³

[18] The Claimant testified that he had engaged in certain job search efforts after October 28, 2024, including an online job search.⁴

² See para 37, 39 and 40 of the General Division decision.

³ See section 9.001 of the Regulations.

⁴ Listen to the audio recording of the General Division hearing at timestamp 00:24:50.

[19] It was perhaps open to the General Division to find that there was no **other** evidence to corroborate his testimony, and it could choose to give little weight to his testimony or to find that his particular job search efforts were insufficient. However, that is not what it did. The General Division treated the Claimant's testimony as though it was not evidence at all. It did not weigh his online job search efforts in its analysis.

Remedy

[20] Since I have found an error in the General Division's decision, I have the power to send the matter back to the General Division to reconsider, or I may make the decision that the General Division should have made.⁵

[21] The Commission asks that I return the matter to the General Division so that it can reconsider whether the Commission acted judicially. The Claimant agrees that the General Division should reconsider this issue. However, the Claimant asks that I substitute my decision for that of the General Division on the issue of his availability for work. He wants me to find that he was available for work before I send it back to the General Division.

[22] If I return the matter to the General Division to evaluate whether the Commission reconsidered judicially, I cannot also substitute my decision for that of the General Division on the question of the Claimant's availability.

[23] I cannot know whether the General Division will find that the reconsideration decision was not made judicially. But if it did, this would mean that the Commission's reconsideration decision would be of no effect. Such a decision could not be reconciled with any decision I might make on availability, since it would invalidate the decision on which the appeal is based.

[24] I must either return it to the General Division to decide whether the Commission acted judicially and if so, whether the Claimant was available for work, or I will need to make the decision on both of these questions.

⁵ See section 59(1) of the DESDA.

I am returning the matter to the General Division

[25] The General Division did not consider whether the Claimant made a sufficient job search for “suitable employment,” in its decision; nor did the question arise in the course of the General Division hearing.

[26] “Availability for work” is concerned with a claimant’s availability for suitable employment. Section 9.002 of the *Employment Insurance Regulations* defines suitable employment as employment permitted by a claimant’s health and physical capabilities.

[27] There was some evidence that the Claimant had physical limitations that may have limited his employment prospects, but neither the Claimant’s job search efforts, nor his availability more broadly, were evaluated in light of those limitations.

[28] The Commission decided that it could not pay regular benefits from October 28, 2024, because he had, “not been able to attend job interviews or accept employment **due to a medical issue.**” However, it only started the Claimant’s sickness benefits effective March 23, 2025, which suggests that the Commission considered him capable of work prior to March 23, 2025.

[29] The Commission’s failure to analyze the Claimant’s job search availability for suitable employment may have been an error of law, but the Claimant did not argue that the General Division made this kind of error. My decision is based on other errors.

[30] But if I were to substitute my decision for that of the General Division, I would have to consider the Claimant’s availability for suitable employment. Therefore, I am returning the matter to the General Division because the Claimant was not given a fair opportunity to present evidence on what kind of employment was suitable or whether he made a sufficient search for suitable employment.

[31] In other words, the Claimant may have had health or physical limitations between October 28, 2024, and March 23, 2025, that would have limited the number and type of job opportunities. If so, this would have been relevant to the sufficiency of his job search efforts.

[32] The parties may choose to also present arguments on whether the Commission acted judicially in reconsidering the Claimant's regular benefits.

Conclusion

[33] The appeal is allowed. The General Division made an error of jurisdiction and fact.

[34] I am returning the matter to the General Division to reconsider.

Stephen Bergen
Member, Appeal Division