Citation: *LB v Canada Employment Insurance Commission*, 2026 SST 234

# Social Security Tribunal of Canada
## Appeal Division

# Leave to Appeal Decision

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| **Applicant:** | L. B. |
| **Respondent:** | Canada Employment Insurance Commission |

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| **Decision under appeal:** | General Division decision dated February 19, 2026 (GE-26-335) |

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| **Tribunal member:** | Elizabeth Usprich |
| **Decision date:** | March 24, 2026 |
| **File number:** | AD-26-129 |

## Decision

[1] Leave (permission) to appeal is refused. The appeal will not proceed.

## Overview

[2] L. B. is the Applicant. She applied for regular Employment Insurance (EI) benefits on November 11, 2025.

[3] The Canada Employment Insurance Commission (Commission) decided the Applicant was let go due to her own misconduct. Specifically, that the Applicant didn't follow her employer's return to in-person work policy. So, the Commission said the Applicant was disqualified from receiving EI benefits.

[4] The Applicant has maintained that she has a child with special needs and she should be allowed to continue working remotely. The Applicant asked the Commission to reconsider. It didn't change its position. The Applicant then appealed to the Social Security Tribunal (Tribunal) General Division. The General Division agreed with the Commission.

[5] The Applicant has asked for permission to appeal to the Appeal Division. I am denying the Applicant's request for permission to appeal because there is no reasonable chance of success.

## Issues

[6] The issues in this case are:

a) Is there an arguable case that the General Division made an important error of fact when it decided the Applicant wilfully made the choice not to return to onsite work?

b) Is there any other reviewable error?

## I am not giving the Applicant permission to appeal

[7] An appeal can only go ahead if the Appeal Division gives an applicant permission to appeal.[1] I have to be satisfied that the appeal has a reasonable chance of success.[2] There has to be an arguable ground upon which the appeal might succeed.[3]

[8] There are only certain grounds of appeal that the Appeal Division can consider.[4] Briefly, the Applicant has to show the General Division did one of the following:

- It acted unfairly in some way.
- It decided an issue it shouldn't have, or didn't decide an issue it should have. This is also called an error of jurisdiction.
- It made an error of law.
- It based its decision on an important error of fact.

[9] So, for the Applicant's appeal to go ahead, I have to find there is a reasonable chance of success on any of those grounds. The Applicant says the General Division made an important error of fact.

### There is no arguable case the General Division made an important error of fact when it decided the Applicant willfully made the choice not to return to onsite work

[10] An error of fact happens when the General Division makes its decision based on an erroneous (wrong) finding of fact that was "made in a perverse or capricious manner or without regard for the material before it".[5] This means the General Division had to ignore, misunderstand or overlook the evidence in some way.

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[1] See section 56(1) of the Department of *Employment and Social Development Act* (DESD Act).
[2] See section 58(2) of the DESD Act.
[3] See *Hazaparu v Canada (Attorney General)*, 2024 FC 928 at paragraph 13; *O'Rourke v Canada (Attorney General)*, 2018 FC 498; *Osaj v Canada (Attorney General)*, 2016 FC 115 at paragraph 12; and *Ingram v Canada (Attorney General)*, 2017 FC 259 at paragraph 16.
[4] See section 58(1) of the DESD Act. The grounds listed are also known as errors.
[5] See section 58(1)(c) of the DESD Act.

[11] The Applicant worked for her employer and starting in 2020 worked remotely. The employer later made a return-to-in-person-work policy. The employer gave the Applicant extra time to make childcare arrangements. The Applicant didn't return to work in-person. The Applicant says her child has special needs and her employer should have continued to accommodate her working from home.

[12] The Applicant argues that working remotely wasn't her choice. Instead, it was what she was required to do for the safety of her child that has special needs.[6] It is clear the General Division understood the Applicant's argument. It noted the Applicant wanted to continue to work remotely.[7]

[13] The issue in this case was whether there was misconduct under the EI Act.[8] The General Division applied the correct legal test. The General Division grappled with the evidence.[9] It considered the evidence the Applicant presented. It weighed the evidence and then made findings. I can't reweigh the evidence, as that isn't the role of the Appeal Division.

[14] The Applicant continues to argue that because her child has special needs her employer should have allowed her to work remotely. But the law says the focus is on what the Applicant did or didn't do and whether that amounts to misconduct under the Act.[10] Not how the employer behaved.[11] The Applicant seems to be arguing whether her employer acted fairly. Again, that is not an issue for this Tribunal.

[15] The Tribunal can only decide issues under the EI Act. The Tribunal can't make decisions about whether the Applicant has other options under other laws. It is not for the Tribunal to decide if the employer wrongfully let her go or should have made

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[6] See AD1-3 of the Applicant's Application to the Appeal Division.
[7] See the General Division decision at paragraph 18.
[8] See the General Division decision at paragraphs 10 to 26.
[9] See, for example, the General Division decision at paragraphs 18, 19, 21, 23, and 25.
[10] See *Paradis v Canada (Attorney General)*, 2016 FC 1282; *Canada (Attorney General) v McNamara*, 2007 FCA 107.
[11] See section 30 of the Act.

reasonable arrangements (accommodations) for her.[12] Only one thing can be considered: whether what the Applicant did or didn't do is misconduct under the Act.

[16] The General Division found the Applicant's actions were willful.[13] The General Division noted there was no dispute that the Applicant knew about her employer's policy to return to work.[14] The General Division found the Applicant knew, or ought to have known, there was a real possibility she could be let go for not following the policy.[15] The General Division relied on the employer's "clear and unequivocal notice that she had to be onsite on Monday, October 6, 2025, and if she were not, she would be dismissed."[16]

[17] The Applicant didn't return to onsite work and was let go. The General Division applied the correct legal test for misconduct. It found the Applicant didn't follow her employer's policy and was let go for that reason.

[18] The General Division considered the Applicant's arguments. So, it can't be said that it overlooked, misunderstood, or ignored the Applicant's arguments. The Applicant is attempting to reargue her case to the Appeal Division, with the hope of a different outcome. It isn't the role of the Appeal Division to reweigh the evidence that was before the General Division. There is no arguable case the General Division made an important error of fact.

– **There are no additional errors in the General Division decision**

[19] Because the Applicant is self-represented, I reviewed the file, listened to the hearing recording, and looked at the decision the Applicant is appealing. I haven't found any reviewable error that the General Division may have made.[17]

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[12] See *Canada (Attorney General) v McNamara*, 2007 FCA 107.
[13] See the General Division decision at paragraph 19.
[14] See the General Division decision at paragraph 20.
[15] See the General Division decision at paragraph 21.
[16] See the General Division decision at paragraph 24.
[17] The Federal Court has said I must do this in decisions like *Griffin v Canada (Attorney General)*, 2016 FC 874 and *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

## Conclusion

[20] Permission to appeal is refused. This means that the appeal will not proceed.

Elizabeth Usprich
Member, Appeal Division