



Citation: *Canada Employment Insurance Commission v BP*, 2026 SST 224

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Canada Employment Insurance Commission
Representative: Jonathan Dent

Respondent: B. P.

Decision under appeal: General Division decision dated December 15, 2025
(GE-25-3253)

Tribunal member: Elsa Kelly-Rhéaume

Type of hearing: Teleconference

Hearing date: February 27, 2026

Hearing participants: Appellant
Appellant's representative
Respondent

Decision date: March 23, 2026

File number: AD-26-4

Decision

[1] The appeal is allowed. The General Division made an error of law. I have made the decision the General Division should have made. The Claimant wasn't available for work from September 2, 2025, to December 9, 2025. He is disentitled from receiving Employment Insurance (EI) benefits during that period.

Overview

[2] The Claimant, B. P., asked for EI regular benefits on August 14, 2025.¹ The Commission paid the Claimant EI benefits until September 2, 2025. It decided that he wasn't available to work full-time without restrictions from September 2, 2025, since he was going back to school full-time.²

[3] The Claimant asked the Commission to reconsider its decision. He argued that his student visa allowed him to work up to 24 hours per week. He added that he was actively trying to find part-time work.³ The Commission upheld its decision.

[4] The Claimant appealed to the General Division. The General Division allowed his appeal in part. It decided that he hadn't shown he was available while in school. But the General Division decided the Claimant had shown he was available during school breaks.⁴

[5] The Commission asked for permission to appeal, which I granted.

[6] The Commission argues that the General Division exceeded its jurisdiction (went beyond its powers) when it decided that the Claimant was available for work during school breaks. The Commission argues there was no evidence showing the Claimant had a school break between September 2, 2025, and the date of the General Division hearing, on December 9, 2025. The Commission also argues that the General Division

¹ See the Claimant's application at GD3-15.

² See the notes from Service Canada at GD3-20.

³ See the Claimant's application for reconsideration at GD3-21.

⁴ See the General Division's decision at AD1A-9 at paragraph 48.

didn't have jurisdiction because the Commission hadn't made a decision under section 112 of the *Employment Insurance Act* regarding the Claimant's availability during a school break.⁵

[7] The Commission also says that the General Division made an error of law when it failed to identify the specific period during which the Claimant was entitled to benefits.

[8] The Commission doesn't think the General Division made any reviewable error when it decided that the Claimant:

- wasn't available for work when he was in school full-time
- had proven he made reasonable or customary efforts to find work

The only errors mentioned are about how the General Division decided that the Claimant was available for work during school breaks.

[9] The Claimant didn't say the General Division made any errors in its decision. At the Appeal Division hearing, he wanted to know how he could get Service Canada to look at a claim for EI benefits during school breaks that occurred after the General Division hearing. I will address this at paragraph 23 of my decision.

Issues

[10] I have to decide the following issues:

- Did the General Division make an error of law by deciding availability in advance because there was no evidence the Claimant had a school break during the period under review?
- If so, how should I fix the error?

⁵ See the Commission's observations at AD3-4. The written observations refer to section 113 of the *Employment Insurance Act*. But at the Appeal Division hearing, the Commission's representative corrected the written observations and said the accurate provision is section 112 of the Act.

Analysis

[11] The Appeal Division may intervene if the General Division made one of the following errors:

- It breached the principles of natural justice.
- It acted beyond its powers or refused to exercise its powers.
- It made an error of law.
- It based its decision on an important error of fact.⁶

The General Division made an error of law when it decided availability in advance by saying the Claimant was available during school breaks

[12] The law states that the General Division can only look at what the Commission has already decided in its reconsideration decision.⁷ The reconsideration decision said that the Claimant wasn't available starting September 2, 2025, since he had returned to school full-time. The General Division held a hearing on December 9, 2025. The hearing was *de novo*, meaning it was a new proceeding. So, the General Division could look at whether the Claimant was available for work between September 2, 2025, and December 9, 2025. There is no evidence that the Claimant had been on a school break during that period. At the hearing, the Claimant didn't mention he had had a school break since September 2, 2025, and he didn't mention an upcoming one.

[13] An error of law can occur where there is no evidence to support a finding.⁸ I find the General Division made an error of law when it decided that the Claimant had proven availability during school breaks. There was no evidence before the General Division that the Claimant had a school break between September 2, 2025, and December 9, 2025, the date of the General Division's hearing. The General Division could not decide that the Claimant was available in the future, in a hypothetical scenario.

⁶ See section 58(1) of the *Department of Employment and Social Development Act*.

⁷ See section 113 of the *Employment Insurance Act*.

⁸ See the Federal Court's decision *Murphy v Canada (Attorney General)*, 2016 FC 1208 at paragraph 35.

[14] The General Division didn't apply the correct legal test because it assessed availability for a future period. Availability for work must be established for each working day in a benefit period.⁹ The Federal Court of Appeal interpreted section 18(1)(a) of the *Employment Insurance Act* to mean that "availability is assessed by working day in a benefit period in which the claimant can prove that he or she was capable of and available for work on that day and unable to obtain suitable employment".¹⁰

[15] Availability can only be assessed in the past and up to the present. It can't be determined for the future. A specific period must be assessed in light of the specific circumstances, because these can change.¹¹

[16] For example, in the Claimant's case, the evidence on file shows that the Commission had previously determined the Claimant was available during his summer school break. This is why the Commission paid the Claimant EI benefits during the summer 2025 school break, from August 14 up until September 2, 2025, when he went back to school full-time.¹² The record also shows that the Commission had previously informed the Claimant that he was eligible for EI benefits during regular school breaks.¹³ So the Commission has decided in the past that the Claimant is available for EI benefits during school breaks. But the General Division could not determine availability for a future school break, one that might occur after December 9, 2025.

Remedy

[17] The Commission wrote in its observations that I should send the matter back to the General Division for reconsideration.¹⁴ But at the Appeal Division hearing, the Commission's representative said that the administrative file was complete and that I should make the decision that should have been made.

⁹ See section 18(1)(a) of the *Employment Insurance Act*.

¹⁰ See the Federal Court of Appeal's decision *Canada (Attorney General) v Cloutier*, 2005 FCA 73 at paragraph 7.

¹¹ See the Federal Court of Appeal's decision *Canada (Attorney General) v Renaud*, 2007 FCA 328 at paragraph 13.

¹² See the Service Canada notes at GD3-20.

¹³ See the Service Canada notes at GD3-132.

¹⁴ See the Commission's observations at AD3-4.

[18] The Claimant said that the General Division process is long and that he would prefer that the Appeal Division make the decision that should have been made.

I am making the decision that should have been made

[19] I agree that I should make the decision that the General Division should have made.¹⁵ The record is complete and the Claimant had a fair hearing before the General Division. The evidence on file shows the Claimant was in school full-time between September 2, 2025, and December 9, 2025. He didn't have a school break during this period.

[20] I confirm the General Division's conclusion and reasons for deciding that the Claimant proved he made reasonable or customary efforts to find work.¹⁶ This conclusion wasn't disputed by any party.

[21] I confirm the General Division's conclusion that the Claimant wasn't available for work as a full-time student and the reasons supporting that conclusion.¹⁷ Since the Claimant was in school full-time from September 2, 2025, to December 9, 2025, the Claimant wasn't available for work at any time during that period. This means he is disentitled from receiving EI benefits during that period.

I can't accept new evidence

[22] The Claimant sent the Appeal Division an email on January 6, 2026, saying that he had a school break from December 12, 2025, to January 12, 2026. He said that he had requested EI benefits during that school break, but that Service Canada was awaiting the Appeal Division's decision before processing his request.

[23] I told the Claimant that because this is evidence that wasn't before the General Division's hearing, it is new evidence. I also informed him that the Appeal Division usually can't accept new evidence. The new evidence doesn't fall within the three

¹⁵ See sections 59(1) and 64 of the *Department of Employment and Social Development Act*.

¹⁶ See the General Division's decision at AD1A-6 at paragraphs 29 to 36.

¹⁷ See the General Division's decision at AD1A-4 at paragraphs 14 to 28, and 37 to 45.

generally accepted exceptions to the rule against accepting new evidence at the Appeal Division.¹⁸

[24] That being said, any claims for EI benefits during any period that happened after December 9, 2025, should be submitted to Service Canada. The Commission will then decide if the Claimant can be paid EI benefits for that period. The General Division's decision created uncertainty for the Claimant regarding school breaks that hadn't yet occurred. So, I recommend the Commission take this into consideration when assessing claims the Claimant may make for EI benefits starting after December 9, 2025, if the Claimant wants to antedate them.

Conclusion

[25] The appeal is allowed. The General Division made an error of law. The Claimant wasn't available for work from September 2, 2025, to December 9, 2025. He is disentitled from receiving EI benefits during that period.

Elsa Kelly-Rhéaume
Member, Appeal Division

¹⁸ The exceptions to the rule against accepting new evidence are if the evidence relates to the unfairness of the process; if the evidence provides general background information; or if the evidence points to a complete lack of evidence.