Citation: *JM v Canada Employment Insurance Commission*, 2025 SST 133

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	J. M.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated December 27, 2024 (GE-24-4054)

Tribunal member:	Glenn Betteridge
Decision date:	February 18, 2025
File number:	AD-25-67

Decision

[1] Leave (permission) to appeal is refused. The appeal won't go forward.

Overview

[2] J. M. is the Claimant.

[3] Two sections of the *Employment Insurance Act* (EI Act) say a person who wants EI regular benefits has to be available for work.[1] Being available means they have to prove they are actively looking for work and ready to take a suitable job on an ongoing basis.

[4] The Canada Employment Insurance Commission (Commission) decided the Claimant hadn't proved he was available. So, it didn't pay him benefits. He disagreed and asked the Commission to reconsider. The Commission upheld its decision. He appealed.

[5] This Tribunal's General Division dismissed the Claimant's appeal. The General Division decided he had overcome the presumption that full-time students aren't available. But it found he wasn't available because he didn't make reasonable and customary efforts to find suitable employment.[2] It also found he wasn't available because he didn't meet the second and third parts of the *Faucher* test.[3] This meant the Commission could not pay him EI regular benefits.

[6] To get permission to appeal the General Division decision, the Claimant has to show his appeal has a reasonable chance of success. Unfortunately, he hasn't.

Issues

[7] I have to decide three issues.

---

[1] See sections 18(1)(a) and 50(8) of the *Employment Insurance Act* (EI Act).
[2] See section 50(8) of the EI Act.
[3] The courts have said the Tribunal has to use the three-part *Faucher* test to decide whether someone is available under section 18(1)(a) of the EI Act.

- Is there an arguable case the General Division procedure was unfair to the Claimant because the job search requirement is subjective, and the General Division decided his entitlement based on that requirement when the Commission didn't?

- Is there an arguable case the General Division made an important error of fact?

- Is there any other reason I can give the Claimant permission to appeal?

I am not giving the Claimant permission to appeal

[8] I read the Claimant's application to appeal.[4] I read the General Division decision. I reviewed the documents in the General Division file.[5] And I listened to the General Division hearing.[6] Then I made my decision.

[9] For the reasons that follow, I am not giving the Claimant permission to appeal.

The test for getting permission to appeal

[10] I can give the Claimant permission to appeal if his appeal has a reasonable chance of success.[7] This means he has to show an arguable case the General Division made one of the following errors which could change the outcome in his appeal.[8]

- It used an unfair process or was biased.[9]

- It used its decision-making power improperly, called a jurisdictional error.

- It made an important factual error.

---

[4] See AD1 and AD1C.
[5] See GD2, GD3, and GD4.
[6] The General Division hearing lasted over one hour.
[7] See section 58(2) of the *Department of Employment and Social Development Act* (DESD Act).
[8] The Federal Court has said an appeal has a reasonable chance of success when there is some arguable ground upon which the proposed appeal might succeed. See *Brown v Canada (Attorney General)*, 2024 FC 1544 at paragraph 41, citing *Osaj v Canada (Attorney General)*, 2016 FC 115 at paragraph 12.
[9] The bullets are the grounds of appeal in section 58(1) of the DESD Act. I call them errors.

- It made a legal error.

[11] Because the Claimant is representing himself, I should not apply the permission to appeal test mechanistically.[10]

There isn't an arguable case the General Division procedure was unfair to the Claimant

[12] The Claimant checked the box that says the General Division didn't follow procedural fairness.[11]

[13] The General Division makes an error if it uses an unfair process.[12] The question is whether a person knew the case they had to meet, had a full and fair opportunity to present their case, and had an impartial decision-maker consider and decide their case.[13]

[14] The Claimant didn't argue the General Division member was biased or prejudged his appeal. And nothing I heard or read suggested an arguable case the General Division was biased or prejudiced.

[15] The Claimant seems to be arguing the General Division process was unfair because the job search test is subjective.[14] He says the law doesn't include a minimum or specific threshold that says what counts as a sufficient job search. He says he should have to show he put forth effort every single month, which he did.

[16] He also argues it was unfair of the General Division to change the main issue in his appeal. He says the Commission denied him benefits because his full-time school meant he was unavailable. He says the Commission didn't deny him benefits for

---

[10] The Federal Court has said this in decisions like *Griffin v Canada (Attorney General)*, 2016 FC 874; *Karadeolian v Canada (Attorney General)*, 2016 FC 615; and *Joseph v Canada (Attorney General)*, 2017, FC 391.
[11] See AD1-3.
[12] This is a ground of appeal under section 58(1)(a) of the DESD Act.
[13] See *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69; and *Kuk v Canada (Attorney General)*, 2024 FCA 74.
[14] See AD1C-1.

insufficient job search efforts. So, it makes no sense the General Division decided his case based on his job search efforts.

[17] The Claimant's arguments misunderstand the law, in three ways.

[18] First, job searching is part of the law of availability. The legal tests for availability under sections 50(8) and 18(1)(a) both include a job search requirement. The Commission relied on these sections to deny him benefits. To get regular benefits, he had to prove he was available. This included proving he met the job search requirements.

[19] Second, his arguments misunderstand the General Division's role and powers. In an appeal, it takes a fresh look at the Commission's decision and the underlying legal issue or issues.[15] It has to decide if the Commission's decision was correct given the law and the evidence before the General Division. In the Claimant's appeal, the General Division had to use the presumption full-time students aren't available and the two availability sections of the EI Act to decide whether he showed he was available.

[20] Third, the law is often subjective and open to interpretation. But that doesn't mean the decision-making process under the law is unfair.

[21] The General Division acknowledged there was no formula for the job search requirements (paragraph 30). Then it explained how it would interpret and apply the job search requirements (paragraphs 30, 33, and 34). It was the General Division's job to decide whether he met those requirements. It had to do this by weighing the evidence and applying the law.

[22] That's what the General Division did. This process wasn't unfair to the Claimant. I understand the Claimant thinks the law is unfair and the outcome in his appeal is unfair. But I can't consider general unfairness—of the law or the outcome it leads to—when I decide whether to give permission to appeal.

---

[15] In law, this is called a *de novo* hearing.

[23] The Commission might not have fully explained the job search requirement and how it fit into the legal tests for availability. But as part of the General Division appeal process, the Tribunal sent the Claimant the Commission's written submissions weeks before his hearing.

[24] The Commission's written arguments make it clear it believed his job search wasn't adequate.[16] The Commission explains the law about availability. Then it argues the Claimant didn't show he was actively seeking work. And he didn't show he was aggressively searching for work while in school full-time. Finally, the Commission says, "a job search with only 5 jobs that he applied to at the end of November 2024, which does not reflect the actions of someone who is sincerely searching for work."

[25] Near the beginning of the hearing, the General Division member explained the law of availability, including the job search requirement, in plain language.[17] Later it explained the job search requirement in more detail.[18] It also explained EI isn't a needs-based program—it's an insurance program. This means people have to qualify for a benefit then meet the conditions of eligibility on an ongoing basis.

[26] The General Division asked the Claimant questions based on the presumption of non-availability, and the legal tests for availability including job search activities. The General Division read parts of the Commission's written argument to the Claimant and gave him an opportunity to respond.[19] And the General Division gave the Claimant the last word by asking him if he had anything else he wanted it to know, that wasn't in the documents or his testimony.[20]

[27] To summarize, the General Division gave the Claimant several opportunities to know the case he had to meet. And the General Division gave him a full and fair opportunity to present his evidence and arguments. So, the Claimant hasn't shown an

---

[16] See GD4-5.
[17] Listen to the recording of the General Division hearing at 18:10 to 20:17.
[18] Listen to the recording of the General Division hearing at 55:43 to 58:47.
[19] Listen to the recording of the General Division hearing at 55:43 and 1:04:51.
[20] Listen to the recording of the General Division hearing at 1:28:28.

arguable case the General Division process or hearing was unfair to him. And I didn't find an arguable case.

There isn't an arguable case the General Division made an important factual error

[28] The Claimant checked the box that says the General Division made an important error of fact.

[29] The General Division makes an important factual error if it bases its decision on a factual finding it made by ignoring or misunderstanding relevant evidence.[21] In other words, some evidence goes squarely against or doesn't support a factual finding the General Division made to reach its decision.

[30] It's the General Division's job to review and weigh the evidence.[22] I can't re-weigh the evidence or substitute my view of the facts. The law also says I can presume the General Division reviewed all the evidence—it doesn't have to refer to every piece of evidence.[23]

[31] The Claimant argues the General Division denied his appeal even though the law doesn't require a minimum or set a specific threshold for job searches. "[S]o I feel like as long as I can show I was putting forth effort every single month to search and I genuinely was, that should be enough."[24]

[32] The Claimant's argument doesn't show the General Division ignored or misunderstood **relevant** evidence. The Claimant's belief about the law and his view of his efforts to find work were his arguments, not evidence. The General Division reviewed and considered the relevant evidence—given the legal tests it had to use.

---

[21] Section 58(1)(c) of the DESD Act says it is a ground of appeal where the General Division based its decision on an erroneous finding of fact it made in a perverse or capricious manner or without regard for the material before it. I have described this ground of appeal using plain language, based on the words in the Act and the cases that have interpreted the Act.
[22] See *Tracey v Canada (Attorney General)*, 2015 FC 1300 at paragraph 33.
[23] See *Sibbald v Canada (Attorney General)*, 2022 FCA 157 at paragraph 46.
[24] See AD1C-1.

[33] The General Division reviewed in detail evidence about his job search (paragraphs 32, 35 to 49).

[34] Unfortunately, the Claimant didn't understand the EI program and the job search requirements.[25] After the General Division explained that EI is an insurance program and explained the job search requirements to him, he admitted he wasn't searching hard enough.[26]

[35] So, the Claimant hasn't shown an arguable case the General Division ignored or misunderstood relevant evidence about his job search.

[36] I considered whether the General Division ignored or misunderstood any other evidence. I listened to the hearing and read the General Division file. I didn't find an arguable case the General Division ignored or misunderstood relevant evidence. In other words, the evidence supports the General Division decision.

There is no other reason I can give the Claimant permission to appeal

[37] The Claimant is representing himself. So, I considered whether there was an arguable case the General Division made another type of error.

[38] There isn't an arguable case the General Division used its decision-making authority improperly. It identified the issues it had to decide (paragraphs 6 to 8). Then it decided only those issues.

[39] There isn't an arguable case the General Division made a legal error. It identified the correct legal test for availability, including the presumption of non-availability that applies to full-time students (paragraphs 9, 10, 12, 13, 18, 19, 25, 26, 30, 33, 34, 51, and 52). Then it applied the correct tests.

---

[25] Listen to the recording of the General Division hearing at 1:04:51.
[26] Listen to the recording of the General Division hearing at 1:24:40.

[40] Finally, the General Division's reasons are more than adequate.[27] It grappled with the right questions and considered the parties' evidence and arguments. And its reasons add up.

Conclusion

[41] The Claimant's appeal doesn't have a reasonable chance of success. This means I can't give him permission to appeal.

Glenn Betteridge
Member, Appeal Division

[27] See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211. See also *Sennikova v Canada (Attorney General)*, 2021 FC 982 at paragraphs 62 and 63.