Citation: *JT v Canada Employment Insurance Commission*, 2025 SST 314

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	J. T.
Representative:	D. T.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated February 28, 2025 (GE-25-265)

Tribunal member:	Stephen Bergen
Decision date:	April 1, 2025
File number:	AD-25-229

Decision

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

Overview

[2] J. T. 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] The Claimant was offered a placement in a training program within days of when he lost his job. He had been on the waitlist to get into the program for about two years, but the offer of a placement was unexpected and on short notice. The Claimant accepted the placement and enrolled in the program.

[4] He had hoped to obtain financial support for the training through EI, but he did not have time to complete all the paperwork to obtain a referral to the training. When he applied for EI benefits, the Commission said he was not entitled to benefits because he was going to school and not available for work.

[5] The Claimant asked the Commission to reconsider, but it would not change its decision. When he appealed to the General Division of the Social Security Tribunal, it dismissed his appeal. He is now asking the Appeal Division for permission to appeal.

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

Issue

[7] Is there an arguable case that the General Division made an error of fact by ignoring evidence that the Claimant consulted with Service Canada to obtain sponsorship for his training program after he was laid off from a full-time position?

I am not giving the Claimant permission to appeal

General legal principles that apply to applications for leave to appeal

[8] 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.

[9] 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.[1]

[10] 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."[2]

[11] The Claimant selected the ground of appeal that describes an important error of fact.

Error of fact

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

[13] The Claimant suggests that the General Division did not consider his testimony that he had been laid off from a full-time position. He also argued that that the General

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[1] 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).
[2] See *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; and *Ingram v Canada (Attorney General)*, 2017 FC 259.

Division did not consider how he consulted with Service Canada to try to obtain the sponsorship.

[14] The Claimant testified that he visited Employment Options after he learned he had a placement in the training. He spoke to a counselor but was told there was nothing they could do in such a short period. The counselor told him they could "make something happen" if they even had a couple of weeks.[3] So there was some evidence that the Claimant inquired at Employment Options about sponsorship for his training, that he may have been eligible for a referral to the training, and that he could not obtain the referral because there was not enough time.

[15] In his request for reconsideration, the Claimant disagreed with the fact that the Commission disentitled him from receiving benefits because he had not been sponsored or referred to his training. However, the General Division had no jurisdiction to consider whether he could, or should, have received a referral. As the General Division noted, the Commission had not made a decision on that issue, so it was not before the General Division. In any event, Commission decisions on referrals are not appealable to the General Division.[4]

[16] The issue in the reconsideration decision was whether the Claimant was "available for work." That was the only issue the General Division could consider. This means that his evidence could only be relevant to the decision if it were relevant to whether he was available for work. And the General Division could only make an error of fact if it had ignored or misunderstood evidence that could have affected the key findings on which it decided the Claimant's availability.[5]

[17] The key findings are those that are required by the *Employment Insurance Act* (EI Act), and by case law that interprets the EI Act. The EI Act says that claimants are

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[3] Listen to the audio recording of the General Division hearing at timestamp: 00:31:40; 00:54:00.
[4] Note that section 25(2) of the EI Act says that the Commission cannot reconsider its own decisions on training referrals under section 112 of the EI Act, and that training referral decisions cannot be appealed to the General Division under section 113.
[5] This is a paraphrase. More precisely, section 58(1)(c) of the DESDA states that the General Division makes a (reviewable) error of fact when it has "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."

not entitled to benefits unless they can show that they are "capable of, and available for work, and unable to obtain suitable employment."[6]

[18] Claimants who are full-time students have a harder time proving their availability. The courts have held that full-time students will be presumed to be unavailable for work unless they can show exceptional circumstances.[7]

[19] Despite this, the EI Act has special provisions for students who are referred to their training program by the Commission or by an authority designated by the Commission.[8] The EI Act deems such students to be, "capable of, and available for work, and unable to obtain suitable employment."

[20] I appreciate the Claimant's frustration. Other students in his program were able to receive EI benefits. The only reason the Claimant could not obtain a referral was that he received short notice of the training program opening and Employment Options could not process his paperwork fast enough. This was unfortunate.

[21] However, the Claimant does not dispute that he enrolled in his training without obtaining a referral from Employment Options or the Commission. Because he was not referred to the training, the General Division could only allow his appeal if it found in his favour on two of the related issues.

[22] First, it would need to find that the legal presumption against availability for full-time students does not apply. This means that it needed to find that the Claimant's circumstances were exceptional, which required the Claimant to show that his full-time student status was unlikely to significantly interfere with his availability for work.

[23] Second, the General Division would need to find that the Claimant was actually available. This means that it needed to apply the test for availability as the courts have

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[6] See section 18(1) of the EI Act.
[7] See *Canada (Attorney General) v Gagnon*, 2005 FCA 321; *Canada (Attorney General) v Lamonde* 2006 FCA 44; *Canada (Attorney General) v Cyrenne*, 2010 FCA 349.
[8] See section 25 of the EI Act.

interpreted the test. To determine availability, the courts have held that the General Division must evaluate three factors (the "Faucher factors"):

- Claimants must show they had a desire to return to work as soon as a suitable position was available.
- Claimants must show that they expressed that desire through their job search efforts.
- Claimants cannot have set personal conditions that unduly restricted their chances of returning to the labour market.[9]

[24] Before the General Division could decide the Claimant's availability for work, it needed to make findings on whether the Claimant satisfied all the *Faucher* factors.

[25] There is no arguable case that the General Division made an important error of fact. The Claimant may believe that the General Division ignored or misunderstood his evidence, but he has not identified any evidence that could have affected its key findings.

[26] The Claimant could not prove he could go to school full-time and still be available for work through evidence that he left a full-time job to attend training, or through evidence that he made efforts to negotiate a training referral. Nor does this evidence help him to show he meets all three of the *Faucher* factors used to prove availability.

[27] The Claimant has not pointed to any other evidence that he believes the General Division ignored or misunderstood.

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

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[9] These factors were described in a decision called *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

Conclusion

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

Stephen Bergen
Member, Appeal Division