



Citation: *DC v Canada Employment Insurance Commission*, 2025 SST 325

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: D. C.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated February 27, 2025
(GE-25-240)

Tribunal member: Glenn Betteridge

Decision date: April 7, 2025

File number: AD-25-233

Decision

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

Overview

[2] D. C. is the Claimant. He has asked for permission to appeal a General Division decision.

[3] The General Division decided two things. First, the Canada Employment Insurance Commission used its reconsideration power fairly and properly, and finished its reconsideration in time.¹ Second, he could not get Employment Insurance regular benefits because he wasn't available for work.

[4] A person who wants to get regular benefits has to show they're available for work.² This means they are actively searching for a suitable job on an ongoing basis and will accept a job offer. And they don't have personal conditions that unduly limit their chances of getting back to work.

[5] The Claimant argues the General Division made an important error of fact. It ignored some things he did to find work.

[6] I can give the Claimant permission to appeal if his appeal has a reasonable chance of success. Unfortunately, it doesn't.

Issue

[7] Does the Claimant's appeal have a reasonable chance of success?

¹ The Commission gets its reconsideration power from section 52 of the *Employment Insurance Act* (EI Act). The courts have said the Commission has to use its reconsideration power judicially. I use the phrase "fairly and properly" to mean judicially.

² Sections 18(1)(a) and 50(8) of the EI Act say a person has to show they are available for work.

I'm not giving the Claimant permission to appeal

[8] I read the Claimant's application to appeal.³ I read the General Division decision. I reviewed the documents in the General Division file.⁴ And I listened to the recording of the General Division hearing.⁵ Then I made my decision.

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

The permission to appeal test screens out appeals that don't have a reasonable chance of success⁶

[10] The Appeal Division isn't a do-over of the General Division process. I can only give the Claimant permission to appeal if his appeal has a reasonable chance of success.⁷ This means he has to show an **arguable ground of appeal** upon which his appeal **might succeed**.⁸

[11] I can consider four grounds of appeal, which I call **errors**.⁹ The General Division

- used an unfair process or wasn't impartial (a procedural fairness error)
- didn't use its decision-making power properly (a jurisdictional error)
- made a legal error
- made an important factual error

[12] The Claimant's reasons for appeal set out the key issues and central arguments I have to consider.¹⁰ Because the Claimant is representing himself, I will also look beyond his arguments when I apply the permission to appeal test.¹¹

³ See AD1.

⁴ See GD2, GD3, GD4, and GD7.

⁵ The hearing lasted approximately 48 minutes.

⁶ See *Paradis v Canada (Attorney General)*, 2016 FC 1282 at paragraph 32.

⁷ See section 58(2) of the *Department of Employment and Social Development Act* (DESD Act).

⁸ See *Osaj v Canada (Attorney General)*, 2016 FC 115.

⁹ See section 58(1) of the DESD Act.

¹⁰ See *Hazaparu v Canada (Attorney General)*, 2024 FC 928 at paragraph 13.

¹¹ The Federal Court has said the Appeal Division should not apply the leave to appeal test mechanistically and should review the General Division record. See for example *Griffin v Canada*

There's no arguable case the General Division ignored relevant evidence

[13] The Claimant checked the box that says the General Division made an important error of fact. Then he explains:

I gave my job search and was over looked at which I did the following things: preparing a resume or cover letter, registering for job search tools or with electronic job banks or employment agencies, submitting job applications.¹²

[14] 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.¹³ Relevant means relevant to the legal tests the General Division had to use. I can also presume the General Division reviewed all the evidence—it doesn't have to refer to every piece of evidence.¹⁴

[15] The General Division reviewed the Claimant's evidence about his job search. It didn't ignore the evidence he says it did. The General Division considered that he:

- applied for three jobs (paragraphs 48, 49, and 60)
- said he applied to “many employers” after he was laid off (paragraphs 58 and 60)
- checked the job alerts through his email, used Indeed and Service Canada job banks to look for work (paragraphs 58 and 60)
- updated his resume, adding his last job to his employment history (paragraph 60)

(Attorney General), 2016 FC 874; *Karadeolian v Canada (Attorney General)*, 2016 FC 615; and *Joseph v Canada (Attorney General)*, 2017 FC 391.

¹² See AD1-5.

¹³ Section 58(1)(c) of the DESD Act says it's 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.

¹⁴ See *Sibbald v Canada (Attorney General)*, 2022 FCA 157 at paragraph 46.

[16] The Claimant might be arguing he doesn't agree with the General Division's assessment of his evidence. But that's not an error the law lets me consider. And I can't re-weigh the evidence.

[17] So the Claimant hasn't shown an arguable case the General Division made an important factual error.

[18] I didn't find an arguable case the General Division made an important factual error. I reviewed the documents the General Division had and the Claimant's testimony at the hearing. I didn't find relevant evidence the General Division ignored or misunderstood. And the relevant evidence supports the General Division's decision he wasn't available.

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

[19] There's no arguable case the General Division used an unfair procedure, was biased, or prejudged the appeal. Nothing I read or heard suggested that type of error.

[20] There's no arguable case the General Division made a jurisdictional error. Jurisdiction means the General Division's power to decide a legal issue.

[21] The General Division correctly decided the Commission didn't use section 50(8) to deny benefits to the Claimant (paragraphs 9 to 13). Then the General Division identified the three other issues it had to decide (paragraphs 15 to 17). And it decided only those three issues in the rest of its decision.

[22] There's no arguable case the General Division made a legal error.

[23] It set out the correct legal tests for the three issues it had to decide, including references to court decisions it had to follow (paragraphs 18, 20, 21, 42, 43, 52, and 63). Then it used those legal tests. And it made the findings it had to make to reach its decision.

[24] Finally, the General Division's reasons are more than adequate.¹⁵ It grappled with the right questions. It considered the parties' evidence and arguments. And its reasons add up.

[25] To summarize, my review of the General Division file and decision shows me there is no other reason I can give the Claimant permission to appeal.

Conclusion

[26] The Claimant hasn't shown an arguable case the General Division made an error that might change the outcome in his appeal. And I didn't find an arguable case.

[27] This tells me his appeal doesn't have a reasonable chance of success. So I can't give him permission to appeal the General Division decision.

Glenn Betteridge
Member, Appeal Division

¹⁵ See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211; and *Sennikova v Canada (Attorney General)*, 2021 FC 982 at paragraphs 62 and 63.