Citation: *CN v Canada Employment Insurance Commission*, 2025 SST 336

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	C. N.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated March 12, 2025 (GE-25-148)

Tribunal member:	Solange Losier
Decision date:	April 8, 2025
File number:	AD-25-207

Decision

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

Overview

[2] C. N. is the Claimant. He applied for Employment Insurance benefits (benefits).

[3] The Canada Employment Insurance Commission (Commission) decided that the Claimant wasn't entitled to get benefits because he hadn't proven that he was available for work.[1]

[4] The General Division concluded the same. It found that he hadn't proven he was available for work because he was retired and wasn't looking for work.[2]

[5] The Claimant is now asking for permission to appeal and argues that the General Division made an important error of fact.[3]

[6] I am denying the Claimant's request for permission to appeal because it has no reasonable chance of success.[4]

Preliminary matters

– **The Claimant submitted new evidence**

[7] As part of the Claimant's application to the Appeal Division, he submitted a letter from his former employer dated February 25, 2025. It identifies his job responsibilities and that he retired from work on April 1, 2024.[5]

[8] New evidence is evidence that the General Division didn't have before it when it made its decision. The Appeal Division generally doesn't accept new evidence.[6] This is

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[1] See Commission's initial and reconsideration decisions at pages GD3-16 and GD3-21.
[2] See General Division decision at pages AD1A-1 to AD1A-6.
[3] See pages AD1-1 to AD1-12.
[4] See section 58(2) of the *Department of Employment and Social Development Act* (DESD Act).
[5] See page AD1-12.
[6] See *Tracey v Canada (Attorney General),* 2015 FC 1300 at paragraphs 29 and 34; *Parchment v Canada (Attorney General),* 2017 FC 354, at paragraph 23.

because the Appeal Division isn't the fact finder or rehearing the case. It's a review of the General Division's decision based on the same evidence.[7]

[9] There are some exceptions where new evidence is allowed.[8] For example, I can accept new evidence if it provides one of the following:

- general background information only
- if it highlights findings made without supporting evidence
- shows that the Tribunal acted unfairly

[10] I find that the Claimant's letter from his employer (dated February 25, 2025) is new evidence that wasn't before the General Division.[9]

[11] I'm not accepting the above new evidence because it isn't general background information and doesn't meet any of the other exceptions. This means I can't consider the new evidence when making my decision.

Issue

[12] Is there an arguable case that the General Division based its decision on an important error of fact when it decided that the Claimant was not available for work?

Analysis

[13] An appeal can only proceed if the Appeal Division gives permission to appeal.[10]

[14] I must be satisfied that the appeal has a reasonable chance of success.[11] This means that there must be some arguable ground that the appeal might succeed.[12]

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[7] See *Gittens v Canada (Attorney General)*, 2019 FCA 256, at paragraph 13.
[8] See *Sharma* v *Canada (Attorney General),* 2018 FCA 48 and *Sibbald v Canada (Attorney General),* 2022 FCA 157, at paragraphs 37–39.
[9] See page AD1-12
[10] See section 56(1) of the DESD Act.
[11] See section 58(2) of the DESD Act.
[12] See *Osaj v Canada (Attorney General)*, 2016 FC 115, at paragraph 12.

[15] I can only consider certain types of errors. I have to focus on whether the General Division could have made one or more of the relevant errors (this is called the "grounds of appeal").

[16] The possible grounds of appeal to the Appeal Division are that the General Division did one of the following:[13]

- proceeded in a way that was unfair
- acted beyond its powers or refused to exercise those powers
- made an error in law
- based its decision on an important error of fact.

[17] The Claimant argues that the General Division made an important error of fact, so that's what I will focus on.[14]

I am not giving the Claimant permission to appeal

– There is no arguable case that the General Division made an important error of fact

[18] An error of fact happens when the General Division has "based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it."[15]

[19] I can intervene if the General Division based its decision on an important mistake about the facts of the case. This involves considering some of the following questions:[16]

- Does the evidence squarely contradict one of the General Division's key findings?
- Is there no evidence that could rationally support one of the General Division's key findings?

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[13] See section 58(1) of the DESD Act.
[14] See page AD1-4.
[15] See section 58(1)(c) of the DESD Act.
[16] This is a summary of the Federal Court of Appeal's decision in *Walls v Canada (Attorney General)*, 2022 FCA 47 at paragraph 41.

- Did the General Division overlook critical evidence that contradicts one of its key findings?

[20] The Claimant's main arguments to the Appeal Division are as follows:[17]

- His case is an exception
- He didn't quit his job, he was laid off due to a shortage of work
- He got a company package for voluntary early retirement
- He is retired from work and not looking for work
- His employer told him that benefits were already approved by Service Canada
- He has been in Canada for 40 years and it's now time to learn English

[21] The Commission decided that the Claimant wasn't entitled to get benefits from April 8, 2024, because he hadn't proven his availability for work.[18]

[22] The General Division had to decide whether the Claimant had proven he was capable of and available for work and unable to obtain suitable employment for the period from April 8, 2024.[19] It also had to decide whether the Claimant was making reasonable and customary efforts to obtain suitable employment.[20]

[23] The General Division concluded that the Claimant had not proven he was available for work. It found that he hadn't made any efforts to find a suitable job.[21] It also found that he hadn't proven that his efforts to find a job were reasonable and customary.[22]

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[17] See page AD1-5.
[18] See pages GD3-16 and GD3-21.
[19] See section 18(1)(a) of the *Employment Insurance Act* (EI Act) and *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.
[20] See section 50(8) of the EI Act and 9.001 of the *Employment Insurance Regulations*.
[21] See paragraphs 17, 28–29 of the General Division decision.
[22] See paragraph 22 of the General Division decision.

[24] This fact wasn't disputed by the Claimant because he agreed that he was retired from work and wasn't looking for work.[23] The General Division determined that his choice to remain retired from work was a personal condition that unduly limited his chances of going back to work.[24]

[25] The General Division addressed the argument that he was told by his employer he was eligible to get benefits.[25] It correctly stated that his employer isn't part of the government (Service Canada) that has authority to administer benefits.[26]

[26] The General Division also identified in its decision that the Claimant was taking English classes for self-improvement.[27] Even though the Claimant was doing things for self-improvement, that isn't an exception in law. He still has to prove his availability for work in order to get benefits.

[27] The Claimant also argues that he didn't voluntarily leave his job, but that's not the issue under appeal and isn't the reason he can't get benefits.[28] The only issue before the General Division was whether he had proven his availability for work.

[28] The Claimant's arguments to the Appeal Division amount to a disagreement with the outcome, but that isn't a reviewable error.

[29] The Appeal Division has a limited mandate.[29] I can't intervene in order to settle a disagreement about the application of settled legal principles to the facts of a case. In other words, I can't intervene to reweigh the evidence in order to come to a different or more favourable conclusion for the Claimant.[30]

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[23] See paragraphs 2, 17, 21–22, 26–27, 29, 31–34 of the General Division decision.
[24] See paragraphs 30-31 of the General Division decision.
[25] See paragraphs 6, 18 and 20 of the General Division decision.
[26] See paragraph 19 of the General Division decision.
[27] See paragraphs 17 and 28 of the General Division decision.
[28] See section 30(1) of the EI Act.
[29] See section 58(1) of the DESD Act and *Marcia v Canada (Attorney General),* 2016 FC 16 at paragraph 34.
[30] See G*arvey* v *Canada (Attorney General)*, 2018 FCA 118, at paragraphs 7–11 and *Quadir v Canada (Attorney General),* 2018 FCA 21, at paragraph 14.

[30] There is no arguable case that the General Division based its decision on an important mistake about the facts of the case.[31] Its key findings on the availability issue are consistent with the evidence.

– **There are no other reasons for giving permission to appeal**

[31] I reviewed the file and examined the General Division decision. I didn't find any relevant evidence that the General Division might have ignored or misinterpreted.[32] Also, it correctly stated the law in its decision.[33]

Conclusion

[32] Permission to appeal is refused. This means that the Claimant's appeal will not proceed. It has no reasonable chance of success.

Solange Losier
Member, Appeal Division

[31] See section 58(1)(c) of the DESD Act.
[32] The Federal Court has suggested such a review in decisions like *Griffin* v *Canada (Attorney General),* 2016 FC 874 and *Karadeolian v Canada* (Attorney General), 2016 FC 615.
[33] See paragraphs 9–11, 14–15 and 23–24 of the General Division decision.