Citation: *TS v Canada Employment Insurance Commission*, 2025 SST 367

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	T. S.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated February 25, 2025 (GE-25-225)

Tribunal member:	Stephen Bergen
Decision date:	**April 11, 2025**
File number:	AD-25-226

Decision

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

Overview

[2] T. S. is the Applicant. I will call her the Claimant because this application is about her claim for Employment Insurance (EI) benefits. The Respondent is the Canada Employment Insurance Commission, which I will call the Commission.

[3] The Claimant applied for EI benefits in September 2024, after her summer job ended, and she started going to school full-time. The Commission said that the Claimant was not entitled to benefits because she was not available for work.

[4] The Claimant disagreed that she was not available and asked the Commission to reconsider. The Commission would not change its decision, so the Claimant appealed to the General Division. The General Division dismissed her appeal. The Claimant is now asking the Appeal Division for permission to appeal.

[5] I am refusing permission. The Claimant has not made an arguable case that the General Division made an error of jurisdiction or an error of fact.

Issues

[6] Is there an arguable case that the General Division made an error of jurisdiction?

[7] Is there an arguable case that the General Division made an important error of fact?

I am not giving the Claimant permission to appeal

General legal principles for leave to appeal

[8] For the Claimant's application for leave to appeal to succeed, her 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] In her application to the Appeal Division, the Claimant asserted that the General Division made an error of jurisdiction.

Error of jurisdiction

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

[13] An error of jurisdiction is where the General Division fails to make a decision that it is required to make, or where it makes a decision that it is not authorized to make. The General Division is required to consider all the issues that are on appeal. The Commission's reconsideration decision is the only decision that may be appealed, so the General Division can only consider issues that are found in the reconsideration decision.[3] It must reach a decision on the issues that were appealed but has no jurisdiction to decide any other issues.

[14] The January 10, 2024, reconsideration decision was the decision that the Claimant appealed to the General Division.

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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.
[3] See section 113 of the *Employment Insurance Act* (EI Act).

[15] The Commission informed the Claimant of its original decision by telephone. The notes of that telephone call record how the decision was reached but they do not identify the actual decision.[4]

[16] The Claimant understood that she was being denied benefits because she sought a reconsideration. When the Commission issued its reconsideration decision, it considered a single issue. It considered whether the Claimant was available for work. When the Claimant appealed to the General Division, it also considered only whether the Claimant was available for work.

[17] There is no indication that the Claimant believed that the General Division did not understand what issue she was appealing, and no indication in her application to the Appeal Division that she believes that the General Division missed the point of her appeal.

[18] I accept that the Commission's original decision was about her availability. I accept that the reconsideration decision properly reconsidered her availability, and that the General Division also considered the issue of availability only.

[19] The General Division decision considered the one issue over which it had jurisdiction, and did not go outside its jurisdiction to consider other issues.

Important error of fact

[20] When an application is at the leave to appeal stage, the Tribunal has some latitude to look beyond the grounds of appeal raised by unrepresented claimants.[5]

[21] The Claimant did not select the ground of appeal that is concerned with an important error of fact. However, her disagreement with the General Division decision seems to be more about the General Division's findings of fact, than it is about jurisdiction. Therefore, I have also considered whether the General Division may have made an error of fact.

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[4] See GD3-27.
[5] *Karadeolian v. Canada (Attorney General),* 2016 FC 615.

[22] The General Division makes an "important error of fact" where it bases its decision on a finding of fact that ignores or misunderstands relevant evidence, or where a key finding does not follow rationally from the available evidence.[6]

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

[24] The General Division decided that the Claimant was not entitled to benefits in two ways. First, it held that she had not rebutted the legal presumption that full-time students are not available for work.[7] Second, it found she was not available for work under the general test for availability.[8]

[25] In deciding that the presumption applied to the Claimant, the General Division considered her work history and her willingness to give up her school for a suitable job. It relied on evidence that the Claimant did not have a history of working full-time while attending school and on her statement that she would quit school for a full-time job, but only for a job that was "worth her while" or "good-paying."

[26] It also considered what it termed the "overall context," which included its consideration of the three factors described in the general test for availability, otherwise called the "*Faucher* factors."[9] The General Division found that the Claimant did not satisfy any of the *Faucher* factors.

[27] The General Division found that the Claimant did not show a desire to return to work as soon as a suitable job became available. It relied on evidence that she only wanted a part-time job that she could fit in around her courses, and that she would only

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[6] Section 58(1)(c) of the EI Act describes the error more precisely. It says that it is where, "the General Division 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."
[7] A legal "presumption" may be overcome where there is evidence to the contrary (that it ought not to apply).
[8] Section 18(1) of the EI Act says that a claimant is not entitled to benefits for any period in which they are not available, capable, and unable to find suitable employment. "Available" has been explained in the decision of *Faucher v Canada (Employment and Immigration Commission)*, A-56-96, and others.
[9] The three factors are taken from the *Faucher* decision.

leave her job if she found a job that was worth her while. It noted that she did not look for any job for a period of almost two months.

[28] It also found that the Claimant's job search did not demonstrate her desire to return to work. It based this decision on job market information showing a large number of suitable positions, and on the fact that the Claimant applied for only eight jobs in five months.

[29] Finally, the General Division found that she unduly restricted her chances of getting back to the labour market. The General Division relied on the Claimant's evidence that she was willing to work only two or three shifts a week on evenings and weekends because of the demands of her school schedule.

[30] I appreciate that the Claimant may disagree with these findings. It seems that she may have been willing to work if she were offered the right kind of job. From the Claimant's perspective, she may believe that her job search was sufficient. She may also believe that she should not have had to look for work that conflicted with her school, or work that was not worth her while.

[31] However, the Claimant has not pointed to any relevant evidence that the General Division overlooked or misunderstood, and that could have challenged any of its key findings. I have no power to interfere with how the General Division weighed or evaluated the evidence—to decide as it did.[10]

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

Conclusion

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

Stephen Bergen
Member, Appeal Division

[10]See, for example: *Hideq v Canada (Attorney General)*, 2017 FC 439, *Parchment v Canada (Attorney General)*, 2017 FC 354, *Johnson v Canada (Attorney General)*, 2016 FC 1254, *Marcia v Canada (Attorney General)*, 2016 FC 1367.