



Citation: *Canada Employment Insurance Commission v LB*, 2025 SST 572

Social Security Tribunal of Canada Appeal Division

Decision

Appellant:	Canada Employment Insurance Commission
Representative:	Linda Donovan
Respondent:	L. B.

Decision under appeal:	General Division decision dated March 17, 2025 (GE-25-479)
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Tribunal member:	Elizabeth Usprich
Type of hearing:	Videoconference
Hearing date:	May 29, 2025
Hearing participants:	Appellant's representative Respondent
Decision date:	May 30, 2025
File number:	AD-25-250

Decision

[1] The appeal is allowed.

[2] The General Division made an error of fact and law. It didn't explain why it was accepting contradictory evidence. It also didn't look at each week individually to determine if the Claimant was capable and available as required by the *Employment Insurance Act*. The matter will go back to the General Division for reconsideration.

Overview

[3] L. B. is the Claimant. The Claimant was on Employment Insurance (EI) sickness benefits. She received the maximum allowable of those benefits. She then asked to have her claim converted to regular EI benefits.

[4] For regular EI benefits, the Claimant had to show she was capable of and available for suitable employment. The Social Security Tribunal (Tribunal) General Division found that suitable employment for the Claimant was employment that she had the health and physical capabilities to perform, according to her doctor's gradual return to work plan.¹

[5] The General Division allowed the Claimant's appeal. It decided that the Claimant was entitled to regular EI benefits.

[6] The Canada Employment Insurance Commission (Commission) appealed the General Division's decision. The Commission says the General Division made an error of law and important error of fact. It says the Claimant was working the maximum hours and days as set out by her doctor. The Commission says this means the Claimant can't prove that she was available because she was working to the maximum her doctor said she should. In other words, the Claimant had a medical restriction that made her unavailable for work.

¹ See the General Division decision at paragraph 20.

[7] The Commission says the General Division based its decision on an important error of fact. The General Division didn't explain why it preferred one set of facts over the other.

[8] I am allowing the appeal and the parties have agreed to the outcome.

The parties agree on the outcome of the appeal

[9] The Commission says the General Division made two errors. It says the General Division didn't apply the proper legal test for availability. It also says the General Division made an important error of fact because it relied on contradictory testimony without giving reasons for doing so.

[10] At the General Division hearing, the Claimant testified her employer didn't schedule her for the maximum amount of time she was capable of working. The Claimant agrees the General Division should have guided her through each week. She says she has additional testimony to give about this. The Claimant also submitted new evidence that showed the shifts her employer scheduled her. She would like an opportunity to submit this evidence to the General Division.

I accept the proposed outcome

[11] Section 18(1)(a) of the EI Act says a claimant has to prove that they are capable of and available for work and unable to obtain suitable employment. The EI Regulations explain a working day is considered any day from Monday to Friday.² There are a few elements to this provision, including whether someone is capable of work and what suitable employment for the particular claimant is. So, the Claimant's health and physical capabilities have to be considered and analyzed.

[12] The Claimant provided a few doctor's notes to the General Division. The relevant timeframe is from September 23, 2024, to January 10, 2025. The first relevant doctor's

² See section 32 of the *EI Regulations*.

note was written on September 18, 2024.³ This note says the Claimant can work a maximum of three days per week and no more than 5 to 6 hours per day.

[13] The next relevant note was on October 16, 2024.⁴ This note says the Claimant can work a maximum of four days per week and no more than 6 hours per day. This note continued until January 15, 2025, when the Claimant's doctor cleared her for full-time work.⁵

[14] The Commission says the General Division ignored that the Claimant was working to her full capability with her regular employer. The Commission argues the General Division didn't correctly apply the law.

[15] The General Division noted that a claimant has to be capable of and available for work but unable to find a suitable job.⁶ But the Claimant was in a suitable job with her regular employer who was accommodating her.

[16] The Commission also says the General Division made an important error of fact when it based its decision on the Claimant's contradictory testimony presented at the hearing. It is, of course, open to the General Division to accept contradictory testimony. But when it does, it must explain why it prefers one statement over the other.⁷

[17] The General Division notes twice that the Claimant's employer didn't provide her with all the hours she could have worked.⁸ The General Division doesn't make it clear if that was for all the weeks, or which weeks the Claimant could have worked more hours. The General Division didn't explain if the Claimant was capable of any additional working hours.

³ See GD3-23 of the Commission's Reconsideration File.

⁴ See GD3-40 of the Commission's Reconsideration File.

⁵ See GD3-46 of the Commission's Reconsideration File.

⁶ See the General Division decision at paragraph 35.

⁷ See GD3-41 of the Commission's Reconsideration File. The Commission's notes say the Claimant said her employer was meeting the accommodations her doctor set out. But listen to the General Division hearing recording at 00:32:25, 00:34:43 and 00:36:39 where the Claimant says she could have worked more hours than her employer scheduled her.

⁸ See the General Division decision at paragraphs 29 and 36.

[18] The parties agreed there was an incomplete review of the Claimant's capability during the time when she was gradually returning to full-time work. Based on the information before me, I accept that there is a gap in the evidence about the hours the Claimant was capable of and available for work but her employer didn't schedule her.

[19] The case must go back to the General Division for a new hearing. The Claimant says she wants to provide more information about her employer failing to schedule her. The Commission may also want to have the opportunity to respond to the Claimant's documentation.

[20] The Claimant is now working full-time. It would be helpful to the Claimant if the General Division could schedule a hearing around her work schedule.

Conclusion

[21] The appeal is allowed.

[22] The General Division made an error of fact and law. It didn't explain why it was accepting contradictory evidence. It also didn't look at each week individually to determine if the Claimant was capable and available as required by the EI Act. The matter will go back to the General Division for reconsideration.

Elizabeth Usprich
Member, Appeal Division