



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. S. v Canada Employment Insurance Commission*, 2019 SST 160

Tribunal File Number: AD-19-61

BETWEEN:

S. S.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: February 25, 2019

DECISION AND REASONS

DECISION

[1] The application for leave to appeal is refused.

OVERVIEW

[2] The Applicant, S. S. (Claimant), was collecting Employment Insurance benefits when he lost the access code that would allow him to file regular online claim reports. After a significant delay in which the Claimant was not paid benefits, he obtained a new access code, submitted reports, and began receiving benefits again. The Claimant also requested the Respondent, the Canada Employment Insurance Commission (Commission), to antedate his claim reports so that he could receive the benefits for the period that he had missed.

[3] The Commission refused the Claimant's request because it found that the Claimant did not have good cause for the delay in filing his reports. When the Claimant asked the Commission to reconsider, it maintained the original decision. The Claimant appealed to the General Division of the Social Security Tribunal, but his appeal was dismissed. He now seeks leave to appeal to the Appeal Division.

[4] The Claimant has no reasonable chance of success on appeal. There is no arguable case that the General Division's decision was based on an erroneous finding of fact.

ISSUE

[5] Is there an arguable case that the General Division based its decision that the Claimant did not have good cause for the delay in filing his claim reports on an erroneous finding that the Claimant lost his access code on March 13, 2018?

ANALYSIS

[6] The Appeal Division may intervene in a decision of the General Division only if it can find that the General Division has made one of the types of errors described by the "grounds of appeal" in section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

[7] The grounds of appeal are as follows:

- a) The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- b) The General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- c) 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.

[8] To grant this application for leave and allow the appeal process to move forward, I must find that there is a reasonable chance of success based on one or more grounds of appeal. A reasonable chance of success has been equated to an arguable case.¹

Is there an arguable case that the General Division based its decision that the Claimant did not have a good cause for the delay in filing his claim reports on an erroneous finding that the Claimant lost his access code on March 13, 2018?

[9] In his leave to appeal application, the Claimant argues that the “EI officer noted on May 29th that [the Claimant] lost the [access code to file online reports] on March 13th - This is not correct.” The General Division decision is dated November 30, 2018, not May 29, but the Commission’s file includes notes of a discussion with a Commission officer that took place May 29, 2018, in which it is said that the Claimant lost his access code around March 12, 2018.² I must assume that the Claimant’s argument references the Commission note and that his concern is with the manner in which his statement was recorded by the Commission officer on May 29, 2018.

[10] It was open to the Claimant to challenge the Commission’s findings or conclusions at the General Division. However, on this appeal to the Appeal Division, he must identify an error that was made by the General Division. The Claimant has not identified how the General Division erred in considering the evidence that was before it.

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

² GD3-16.

[11] Nevertheless, I have reviewed the record for any mistaken or overlooked evidence that might raise an arguable case that the General Division made an error. This is consistent with the Federal Court's decision in *Karadeolian v Canada (Attorney General)*,³ in which the court determined that leave to appeal may still be granted where the General Division arguably overlooked or misunderstood key evidence, even where an applicant has not properly identified such an error under the grounds of appeal.

[12] In its decision, the General Division stated that the Claimant lost the access code on March 13, 2018. When the General Division member asked the Claimant at the hearing whether March 13 was the correct date, the Claimant agreed that it was.⁴ However, the Claimant's acceptance of this date followed immediately after the General Division informed the Claimant that he had previously told the Commission that the date was March 13.⁵

[13] The General Division's question to the Claimant reveals that it was mistaken as to what the Claimant had previously indicated. The Commission's notes state that the Claimant said he lost the code "around March 12, 2018".⁶ There is no indication in the materials before the General Division that the Claimant had ever stated that he lost the access code on March 13. In the hearing, the Claimant agreed with the member that the date was March 13, but he may well have been influenced by the General Division's mistake and the manner in which the question was posed to him.

[14] It is at least arguable that the General Division was mistaken when it found that the Claimant had lost the access code on March 13, 2018. However, to find an arguable case that the General Division erred under section 58(1)(c), I would also need to find an arguable case that the General Division based its decision on that finding.

[15] I do not accept that there is an arguable case that the General Division decision was based on a finding that the Claimant had lost the access code on March 13, 2018, specifically.

³ *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

⁴ Audio recording of General Division hearing at 00:07:05.

⁵ *Ibid.* at 00:06:55.

⁶ *Supra* note 2.

[16] *Before* the General Division member suggested to the Claimant that he had lost the access code on March 13, the member first asked the Claimant, in an open-ended manner, when it was that he lost the access code. The Claimant testified that he was “just going to go back to the date that [he] initially put because it ha[d] been a while.”⁷ March 12 is the only date that he had ever given to the Commission as the date that he lost the access code. Therefore, while the evidence may not have supported a finding that the Claimant lost the access code on March 13, 2018, the only other evidence before the General Division is that the Claimant lost it on March 12 instead.

[17] If I assume that the General Division was particularly concerned with the delay from the date the access code was lost, that delay would have been approximately nine weeks, and therefore substantial, regardless of whether the General Division accepted March 13 or March 12, as the date the access code was lost. In fact, if March 12 were taken as the correct date instead of March 13, than the delay would actually be one day longer.

[18] The fact that March 13, 2018, may have been understood as the date the access code was lost instead of March 12 does not raise an arguable case that the General Division decision is based on an erroneous finding that the Claimant did not have good cause for the delay.

[19] I have found no other evidence that may have been overlooked or mistaken in the record that might support an arguable case. The Claimant has no reasonable chance of success in his appeal.

CONCLUSION

[20] The application for leave to appeal is refused.

Stephen Bergen
Member, Appeal Division

REPRESENTATIVE:	S. S., self-represented
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⁷ *Supra* note 4 at 00:06:45.