



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. O. v Canada Employment Insurance Commission*, 2020 SST 769

Tribunal File Number: AD-20-614

BETWEEN:

A. O.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: September 10, 2020

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, A. O. (Claimant), applied for Employment Insurance benefits in September 2018. Because the Respondent, the Canada Employment Insurance Commission (Commission), had to allocate certain separation payments that the Claimant's employer had given to him, the Claimant did not receive any benefits at the time. However, he later returned to work and was again laid off.

[3] On May 9, 2019, the Claimant applied to have his application renewed. About two months passed and the Claimant had still not received benefits, so he called the Commission. He learned that he was not receiving benefits because he had not filed any claim reports. He asked that the Commission backdate his reports to May 5, 2019, but the Commission refused, saying that the Claimant did not have good cause for delaying his reports. The Commission would not change this decision when the Claimant asked for a reconsideration.

[4] The Claimant appealed the reconsideration decision to the General Division of the Social Security Tribunal, but the General Division dismissed his appeal. He is now seeking leave to appeal to the Appeal Division.

[5] The Claimant has no reasonable chance of success on appeal. He has not made out an arguable case that the General Division made an error under the grounds of appeal.

PRELIMINARY MATTERS

[6] The only ground of appeal that the Claimant selected in completing his application for leave to appeal is the ground of appeal concerned with natural justice and jurisdiction.¹ He did not explain why he believed the General Division made an error under this ground of appeal and

¹ This error is described in section 58(1)(a) of the *Department of Employment and Social Development Act*. (DESD Act.)

he did not identify or explain any other ground of appeal. However, he said he was consulting with legal advice.

[7] Because of this, I wrote the Claimant on April 23, 2020. I explained the grounds of appeal and to ask him to clarify his reasons for appealing.² I gave the Claimant until May 22, 2020, to respond. The Claimant responded on May 21, 2020, with a request for an extension of time. He said he needed legal representation to help him to respond. I granted an extension on May 27, 2020, but I did not give the Claimant a deadline. The Claimant did not send in a response or contact the Tribunal so I wrote to him again on July 7, 2020 to remind him that the Tribunal was still waiting. This time I imposed a deadline of July 30, 2020 for him to respond. The Claimant wrote the Tribunal on July 25, 2020, to request another extension. He said that he had still not found someone to represent him. I granted him an extension to August 21, 2020. I also told him that I would be going forward with my decision if I did not receive his submission by that date.

[8] On August 21, 2020, the Claimant asked for another extension. He supplied correspondence confirming that he had found a lawyer to review his documents but the correspondence did not suggest that the lawyer had agreed to represent him. I wrote the Claimant on August 27, 2020, to deny his extension and to tell him that I would be making the decision without further notice to him.

[9] At the same time, I informed the Claimant that I would consider any submissions that I received before I had finalized my decision. It has been almost two weeks and I have not received any submissions from either the Claimant or any legal representative. Therefore, I have made my decision based on the Claimant's leave to appeal application, which the Tribunal received on April 18, 2020.

WHAT GROUNDS CAN I CONSIDER FOR THE APPEAL?

[10] To allow the appeal process to move forward, I must find that there is a "reasonable chance of success" on one or more of the "grounds of appeal" found in the law. A reasonable

² This was following the Federal Court decision in *Bossé v. Canada (Attorney General)*, 2015 FC 1142.

chance of success means that there is an arguable case. This would be some argument on which the Claimant could possibly be successful in her appeal.³

[11] The Claimant's reasons for appealing must fit within the "grounds of appeal" because these grounds describe the errors that I am authorized to consider. I can consider only whether the General Division made any of the following errors:⁴

1. The General Division hearing process was not fair in some way.
2. 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.
3. The General Division based its decision on an important error of fact.
4. The General Division made an error of law when making its decision.

ISSUE

[12] Is there an arguable case that the General Division failed to observe a principle of natural justice or made an error of jurisdiction?

ANALYSIS

Natural Justice

[13] There is no arguable case that the General Division made an error by failing to observe a principle of natural justice.

[14] Natural justice refers to fairness of process and it includes procedural protections such as a person's right to be heard and to know the case against him or her, as well as a right to have an unbiased decision-maker.

[15] The Claimant has not said that he did not have adequate notice of the General Division hearing or that he had a problem with the pre-hearing disclosure or exchange of documents. He has not complained about the manner in which the General Division conducted the hearing or

³ This is explained in a case called *Canada (Minister of Human Resources Development) v Hogervorst*, 2007, FCA 41; and in *Ingram v Canada (Attorney General)*, 2017 FC 259.

⁴ This is a plain-language version of the three grounds. The full text is in section 58(1) of the DESD Act.

said that he did not understand the process. Nor did he raise some particular concern with any other action or procedure that could have affected his right to be heard or to answer the case.

[16] Finally, the Claimant has not suggested that the General Division member did or said anything that would lead him to believe that the member was biased or that she had prejudged the matter.

Jurisdiction

[17] There is no arguable case that the General Division made an error by refusing to exercise its jurisdiction or by acting beyond its jurisdiction.

[18] The General Division needed to decide only one issue arising from the October 10, 2019 reconsideration decision. That issue was whether the Claimant should be allowed to backdate his claim reports to May 5, 2019. The General Division reached a decision on this issue, and it did not make a decision on any issue that it was not supposed to consider.

Important error of fact or error of law

[19] The only ground of appeal selected by the Claimant involves her assertion of a natural justice or jurisdictional error. The Claimant did not identify any important error of fact or any error of law.

[20] However, the Federal Court has directed the Appeal Division to look beyond the stated grounds of appeal when it considers leave to appeal applications from self-represented parties like the Claimant.⁵ In accordance with the direction of the Federal Court, I have reviewed the appeal record for any finding that may have ignored or misunderstood significant evidence. I have also considered whether any error of law is readily apparent.

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

[22] The General Division weighed the evidence and found that it did not support a finding that the Claimant had good cause for the delay. It considered the Claimant's statements that he

⁵ See, for example, the decision in *Karadeolian v. Canada (Attorney General)*, 2016 FC 615.

had not known he needed to complete the claim reports. It reviewed how the Claimant said that he did not expect to receive benefits for one or two months after renewing his application because of what his friends and supervisor had told him. The General Division also considered that the Claimant's daughter had helped him with his application in September 2018. It recognized that the Claimant had misplaced the letters that he received from the Commission because he was renovating his home. It also understood that the Claimant immediately called the Commission when he located the October 10, 2018, decision letter.

[23] There is no arguable case that the General Division made an error of law. It noted that the *Employment Insurance Act* (EI Act) only allows a claim to be backdated to an earlier day if the claimant can show good cause for the delay for the entire period beginning on the earlier day and ending on the day when the claim was made.⁶ The General Division also referred to Federal Court of Appeal decisions that say that a claimant must act as a reasonable and prudent person would act in similar circumstances. In addition, he or she must take reasonable and prompt steps to learn about his rights and obligations under the EI Act unless there are exceptional circumstances.⁷ The General Division followed other Federal Court of Appeal decisions that say that that ignorance of the law is not good cause for delay and that a claimant who relies on unverified information⁸ does not have good cause either.⁹

[24] The General Division reached findings of fact that were consistent with the law and evidence. It found that it was not reasonable for the Claimant to rely on unverified information from his friends or supervisor, and not prudent for the Claimant to wait two months before enquiring about his rights or benefits. The General Division did not accept that the Claimant's renovations and misplaced correspondence were exceptional circumstances that had prevented him from learning of his rights under the EI Act.

⁶ Section 10(5) of the EI Act.

⁷ *Canada (Attorney General) v Burke*, 2012 FCA 139; *Canada (Attorney General) v Kaler*, 2011 FCA 266; *Canada (Attorney General) v Somwaru*, 2010 FCA 336.

⁸ *Canada (Attorney General) v Trinh*, 2010 FCA 335.

⁹ *Canada (Attorney General) v Kaler*, 2011 FCA 266; *Canada (Attorney General) v Somwaru*, 2010 FCA 336.

[25] The Claimant may disagree with how the General Division assessed the evidence or with its conclusions. However, I can only consider whether the General Division has made an error under the grounds of appeal. It is not my role to re-evaluate or reweigh the evidence.¹⁰

[26] The Claimant has no reasonable chance of success in this appeal.

CONCLUSION

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

Stephen Bergen
Member, Appeal Division

REPRESENTATIVES:	A. O., Self-represented
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¹⁰ *Bergeron v. Canada (Attorney General)*, 2016 FC 220. *Hideq v. Canada (Attorney General)*, 2017 FC 439.