



Citation: *CV v Canada Employment Insurance Commission*, 2022 SST 98

**Social Security Tribunal of Canada
Appeal Division**

Leave to Appeal Decision

Applicant: C. V.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated January 17, 2022
(GE-21-2481)

Tribunal member: Jude Samson

Decision date: February 25, 2022

File number: AD-22-66

Decision

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

Overview

[2] C. V. is the Claimant in this case. He applied for Employment Insurance (EI) regular benefits in October 2021. The Canada Employment Insurance Commission (Commission) refused his application saying that he did not have enough hours of insurable employment in his qualifying period.¹

[3] As a result, the Claimant asked the Commission to backdate his application to November 2020, when he last worked.²

[4] According to the Claimant, he suffered severe anxiety and stress because of the circumstances surrounding the loss of his job. He also became “fully consumed with getting justice” and applying for new jobs.³ As a result, the Claimant says that he reasonably delayed applying for EI benefits.

[5] Both the Commission and the Tribunal’s General Division have already rejected the Claimant’s arguments. The Claimant now wants to appeal the General Division decision to the Appeal Division. But he needs permission to appeal for the file to move forward.

[6] The Claimant argues that the General Division based its decision on important mistakes about the facts of his case.

[7] The Claimant’s appeal has no reasonable chance of success. I have no choice, then, but to refuse permission to appeal.

¹ Service Canada delivers the EI program for the Commission.

² This is sometimes called an “antedate” request.

³ See page AD1-5.

Issue

[8] The Claimant is raising one main issue: Is there an arguable case that the General Division based its decision on an important mistake about the personal circumstances that prevented him from applying for EI benefits?

Analysis

[9] Most Appeal Division files follow a two-step process. This appeal is at step one: permission to appeal.

[10] The legal test that the Claimant needs to meet at this step is a low one: Is there any arguable ground on which the appeal might succeed?⁴ If the appeal has no reasonable chance of success, then I must refuse permission to appeal.⁵

[11] To decide this question, I considered whether the General Division could have based its decision on an important mistake about the facts of the case. I can consider this type of error.⁶

There is no arguable case that the General Division based its decision on an important mistake about the facts of the case

[12] The Claimant's arguments have no reasonable chance of success.

[13] In this case, the General Division had to decide whether the Claimant could backdate his claim for EI benefits. The General Division decision focuses on whether the Claimant had good cause for delaying his claim between November 15, 2020, and October 12, 2021.

⁴ This legal test is described in cases like *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12 and *Ingram v Canada (Attorney General)*, 2017 FC 259 at para 16.

⁵ This is the legal test described in section 58(2) of the *Department of Employment and Social Development Act* (DESD Act).

⁶ The relevant errors, formally known as "grounds of appeal," are listed under section 58(1) of the DESD Act.

[14] As part of its decision, the General Division concluded that the Claimant:

- did not do what a reasonable and prudent person would have done in his circumstances, and throughout the entire period of the delay;
- did not take reasonably quick steps to understand his entitlement to EI benefits; and
- didn't show exceptional circumstances in his case.

[15] The Claimant now argues that the General Division misunderstood important facts about his case. Specifically, the Claimant highlights how he could not apply for EI benefits sooner because:

- he was not in the right frame of mind due to the severe stress and anxiety he was experiencing following the injustice and discrimination he suffered at work, and the eventual loss of his job;
- he was entirely focused on getting justice from his previous employer and finding a new job; and
- these factors prevented him from thinking about and applying for EI benefits.

[16] The Claimant also argues that the General Division should not have applied a “reasonable person” test in his case because of his state of mind.

[17] However, the General Division clearly understood the Claimant’s circumstances and considered them⁷. The General Division also acknowledged the Claimant’s argument about the reasonable person test.⁸

[18] The General Division recognized the subjective element in the legal test that it was applying⁹. And it assessed the reasonableness of the Claimant’s conduct in the

⁷ See paragraphs 23-28 and 36-37 of the General Division decision.

⁸ See paragraph 20 of the General Division decision.

⁹ See the Federal Court of Appeal’s decision in *Qadir v Canada (Attorney General)*, 2018 FCA 21.

particular circumstances of his case.¹⁰ This is especially obvious in the part of the General Division decision where it considered whether the Claimant's medical condition, legal battles, and new job excused him from taking reasonably prompt steps to investigate his entitlement to EI benefits.¹¹

[19] Overall, the Claimant seems to disagree with the General Division's conclusion, and is repeating the same arguments at the Tribunal's General and Appeal Divisions. In other words, he is asking me to reweigh the evidence. Or, he is challenging the application of settled legal principles to the facts of his case. But I cannot consider these arguments.¹²

[20] Aside from the Claimant's arguments, I have also reviewed the file and examined the General Division decision.¹³

[21] The evidence supports the General Division's decision. I did not find evidence that the General Division might have ignored or misinterpreted. Finally, the Claimant has not argued that the General Division acted unfairly in any way.

Conclusion

[22] I have decided that the Claimant's appeal has no reasonable chance of success. I have no choice, then, but to refuse permission to appeal. This means that the appeal will not proceed.

Jude Samson
Member, Appeal Division

¹⁰ See, for example, the General Division's references to the Claimant's circumstances in paragraphs 16 and 30-31 of its decision.

¹¹ See paragraphs 22 and 35-37 of the General Division decision.

¹² See paragraphs 7 to 11 of the Federal Court of Appeal's decision in *Garvey v Canada (Attorney General)*, 2018 FCA 118.

¹³ The Federal Court has said that I must do this in decisions like *Griffin v Canada (Attorney General)*, 2016 FC 874 and *Karadeolian v Canada (Attorney General)*, 2016 FC 615.