Citation: *ZL v Canada Employment Insurance Commission*, 2022 SST 308

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	Z. L.
Representative:	Y. C.
Respondent:	Canada Employment Insurance Commission
Representative:	J. Lachance

Decision under appeal:	General Division decision dated August 20, 2021 (GE-21-1250) and November 9, 2021 (GE-21-1823)

Tribunal member:	Jude Samson
Type of hearing:	Teleconference
Hearing date:	March 10, 2022
Hearing participants:	Appellant Appellant's representative Respondent's representative
Decision date:	April 21, 2022
File number:	AD-21-290 and AD-21-378

Decision

[1] The appeal is allowed. The Claimant's application for benefits should be treated as though it was received on January 31, 2021.

Overview

[2] Z. L. is the Claimant in this case. His employer laid him off from work for about two months. He wants to receive Employment Insurance (EI) regular benefits during this time.

[3] The Canada Employment Insurance Commission (Commission) says that the Claimant doesn't qualify for benefits during this time because he submitted his application late: on April 6, 2021.[1] It also says that it can't backdate his application because he hasn't shown good cause for the delay.[2]

[4] The Claimant, on the other hand, says that he tried to apply for benefits in the same way as he had done once before. However, the process had changed and he found the information on the Commission's website to be confusing. He also spoke of technical issues and of his language barrier. Plus, the Claimant says that he tried getting information from his employer and from Service Canada.

[5] The Claimant appealed the Commission's decision to the Tribunal's General Division but it dismissed his appeal.[3] The Claimant later asked the General Division to reopen its decision based on new evidence. But the General Division rejected that application too.[4]

[6] The Claimant is now appealing both General Division decisions.

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[1] Service Canada delivers the EI program for the Commission. As a result, I sometimes refer to Service Canada instead of the Commission.
[2] Backdating an application for EI benefits is often referred to as an "antedate."
[3] The first General Division decision is dated August 20, 2021 (in file GE-21-1250).
[4] The second General Division decision is dated November 9, 2021 (in file GE-21-1823).

[7] The Claimant argues that, in its first decision, the General Division overlooked important steps that he took to try and get more information about his entitlement to benefits. I agree. The General Division made an error of law by not analyzing the evidence in a meaningful way.

[8] In the circumstances, I am allowing the appeal and giving the decision the General Division should have given. The Claimant had good cause for not applying for benefits sooner. As a result, the Commission should treat his application as though it was received on January 31, 2021.

[9] Since I am allowing the appeal from the first General Division decision, I do not need to consider the General Division's second decision.

I did not consider the Claimant's "new evidence"

[10] I did not consider any new evidence that the Claimant filed after the first General Division decision. New evidence is evidence that the General Division did not have in front of it when it made that decision. Examples of the Claimant's new evidence include emails with his employer and a letter from Service Canada.[5]

[11] The law limits the powers of the Appeal Division.[6] It is not a place for appellants to reargue their case, filling in gaps in the evidence along the way. Instead, the Appeal Division's focus is on whether the General Division made a relevant error. I base that assessment on the information that the General Division had in front of it.

[12] There are exceptions to the general rule against considering new evidence.[7] For example, I can consider new evidence if it provides general background information, highlights findings that the General Division made without supporting evidence, or reveals ways in which the General Division acted unfairly.

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[5] See, for example, pages AD1-2 to AD1-9 (in file AD-21-290) and AD1C-3 (in file AD-21-378).
[6] The Appeal Division's role is mostly defined by sections 58 and 59 of the *Department of Employment and Social Development Act* (DESD Act).
[7] Although the context is somewhat different, the Appeal Division applies the exceptions to considering new evidence that are described in decisions like *Sharma v Canada (Attorney General)*, 2018 FCA 48 at para 8 and *Greeley v Canada (Attorney General)*, 2019 FC 1493 at para 28.

[13] None of those exceptions apply in this case. Instead, the Claimant has filed new evidence to support his arguments, which have evolved somewhat over time.

Issues

[14] The issues in this appeal are:

a) Did the General Division make an error of law by not analyzing the evidence in a meaningful way?

b) If so, how should I fix the General Division's error?

c) Did the Claimant have good cause for not submitting his application sooner?

Analysis

[15] People who want EI benefits have to apply for them quickly.[8] Otherwise, they risk losing benefits that they might have received before their application date.

[16] However, there is some flexibility in the law. The Commission will treat an application as though it was received on an earlier date if the person can show that they:[9]

- qualified for benefits on the earlier date; and
- had "good cause" for the delay.

[17] The person must show that they had "good cause" during the whole period of the delay.

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[8] See, for example, section 26(1) of the *Employment Insurance Regulations* and the Federal Court of Appeal's decision in *Canada (Attorney General) v Beaudin*, 2005 FCA 123 at paragraphs 5–6.
[9] See section 10(4) of the *Employment Insurance Act* and Federal Court of Appeal decisions like *Canada (Attorney General) v Mendoza*, 2021 FCA 36 at paras 12–14 and *Canada (Attorney General) v Kaler*, 2011 FCA 266 at para 4.

[18] Proving "good cause" can be difficult.[10] People have to show that they did what a reasonable person in their situation would have done to satisfy themselves of their rights and obligations under the law.[11] This includes an obligation to take reasonably prompt steps to determine if they qualified for benefits. Ignorance of the law, even if coupled with good faith, can't help a person establish "good cause" for their delay.

The General Division committed an error of law by not analyzing the evidence in a meaningful way

[19] The first General Division decision focuses on whether the Claimant had good cause for delaying his application for EI benefits over a period of about two months: from January 31 to April 6, 2021.

[20] In the end, the General Division concluded that the Claimant hadn't taken reasonably prompt steps to find out if he qualified for EI benefits.[12] As a result, his application couldn't be backdated.

[21] To get to its conclusion, the General Division found that the Claimant's efforts were limited to:

- looking for information on the Commission's website;
- contacting his employer; and
- calling Service Canada one time in late February or sometime in March.

[22] However, the Claimant argues that the General Division overlooked other important steps that he took to investigate if he qualified for benefits. For example, the

[10] The courts have described the legal test as imposing a duty that is both demanding and strict. See, for example, *Canada (Attorney General) v Kaler*, 2011 FCA 266 at para 4.
[11] The Federal Court of Appeal recently summarized the test for "good cause" in *Canada (Attorney General) v Mendoza*, 2021 FCA 36 at paras 13–14.
[12] See paragraph 27 of the first General Division decision.

Claimant highlights the following parts of his evidence from the General Division hearing:

- The Claimant tried applying for benefits online, as he had done once before. But this time the process had changed, he found it confusing, and he encountered technical problems. The Claimant said it seemed as though his application was not allowed.[13]

- The Claimant tried calling Service Canada several times. However, he sometimes got a busy signal. Other times he waited on the phone for several hours only for his calls to be disconnected. When the Claimant finally managed to speak to someone, he was told that he needed to wait because the system was down.[14]

- Eventually, the Claimant did go to a Service Canada Centre, where he was told that the process had changed significantly. Service Canada staff redirected the Claimant back to the website, which he found unhelpful because he had been unable to start a claim online.[15]

[23] As a general rule, I can assume that the General Division considered all the evidence, even if it didn't specifically mention every piece of if.[16] However, I do not need to apply that rule if, for example, the General Division fails to mention important pieces of evidence, especially ones that contradict its conclusion.[17]

[24] This is part of the General Division's duty to assess the evidence and give reasons for its decision. Viewed from a different angle, the General Division can commit an error of law if it doesn't analyze the evidence in a meaningful way.[18]

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[13] Listen to the audio recording of the General Division hearing at approximately 53:30 to 56:45.
[14] Listen to the audio recording of the General Division hearing at approximately 26:05 to 29:00.
[15] Listen to the audio recording of the General Division hearing at approximately 40:00 to 41:12, 55:19 to 56:42, and 1:15:35 to 1:18:55.
[16] *Simpson v Canada (Attorney General)*, 2012 FCA 82.
[17] See, for example, the Federal Court's decision in *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 at paras 16–17.
[18] The Federal Court of Appeal described this type of error in *Bellefleur v Canada (Attorney General)*, 2008 FCA 13 and *Canada (Attorney General) v Renaud*, 2007 FCA 328 at para 19.

[25] In this case, the General Division committed an error of law by not analyzing the evidence in a meaningful way. While I recognize that the Claimant's evidence was sometimes difficult to follow, I accept that he took important steps to contact the Commission and investigate if he qualified for benefits.

[26] The General Division should have considered this evidence. It shows that the Claimant tried to file an application online and that he tried to contact the Commission several times, over the phone and in person. But the General Division never considered whether these steps helped show good cause for the Claimant's delay in applying for benefits.

[27] Since the General Division committed an error of law, I have the power to intervene in this case.[19]

I will fix the General Division's error by giving the decision it should have given

[28] At the hearing before me, both parties said that, if the General Division made an error, then I should give the decision the General Division should have given.[20]

[29] I agree. The Claimant is not arguing that the General Division prevented him from fully presenting his case. Plus, I have the evidence needed to make a decision in this case.

[30] This means that I can decide whether the Claimant had good cause to delay submitting his application for EI benefits.

The Claimant has shown good cause for his delay

[31] To properly assess the reasons for the Claimant's delay, it's important to acknowledge some of the particular facts of his case.[21]

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[19] Error of law is listed under section 58(1) of the DESD Act.
[20] Sections 59(1) and 64(1) of the DESD Act give me the power to fix the General Division's errors in this way. Also, see *Nelson v Canada (Attorney General)*, 2019 FCA 222 at paras 16–18.
[21] The Federal Court of Appeal discussed the importance of context when assessing reasonableness in *Quadir v Canada (Attorney General)*, 2018 FCA 21 at paras 12–13.

[32] The Claimant is a recent immigrant to Canada with limited English skills.[22] Plus, he had recently moved cities, so he did not have a lot of friends or contacts who could help him with the application process.

[33] At several points in his evidence, the Claimant also referred to the COVID-19 pandemic. Because of the pandemic, the Claimant said that it was harder to seek help. Plus, the Claimant says that both Service Canada staff and his employer often told him to be patient, because everything was delayed by the pandemic.

[34] I recognize that the Claimant had successfully applied for EI benefits once before. However, it is also true that the types of benefits available to Canadians changed rapidly during the COVID-19 pandemic.

[35] With these factors in mind, I find that the Claimant did what a reasonable person in his situation would have done to satisfy himself of his rights and obligations under the law. To reach this conclusion, I relied especially on the following steps that the Claimant took in February and March 2021 to investigate whether he qualified for benefits:

- The Claimant looked for information on the Commission's website and tried to file an application online. However, the Claimant found the information to be confusing and he encountered technical problems on the website.

- The Claimant tried contacting the Commission, both by phone and in person. However, these contacts were frustrated by long delays and technical problems. Plus, the COVID-19 pandemic seemed to limit the help the Commission could provide, other than directing the Claimant back to its website.

- In parallel to this, the Claimant was regularly seeking help from his employer. In fact, he suspected that his employer might have been contributing to the delay because it was late submitting his Record of Employment. The

[22] The Claimant described his personal circumstances during the General Division hearing at approximately 1:09:10 to 1:11:25.

Claimant said that he could not see his Record of Employment online and a Service Canada agent told the Claimant that they hadn't received it either.

- The Claimant also asked for help from his wife and work colleagues. However, they were all in roughly the same situation as him.

[36] All things considered, the Claimant has shown that, between January 31 and April 6, 2021, he took reasonably prompt steps to investigate whether he qualified for benefits. In other words, he did what a reasonable person in his situation would do to satisfy himself of his rights and obligations under the law.

Conclusion

[37] I am allowing the Claimant's appeal. The General Division made an error of law by not analyzing the evidence in a meaningful way. This allows me to give the decision the General Division should have given. In the circumstances of this case, the Claimant had good cause for the delay in applying for benefits. This means the Commission should treat his application as though it was received on January 31, 2021.

Jude Samson
Member, Appeal Division