



Citation: *RM v Canada Employment Insurance Commission*, 2022 SST 227

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

**Applicant:** R. M.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated February 17, 2022  
(GE-21-2581)

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**Tribunal member:** Janet Lew

**Decision date:** April 7, 2022

**File number:** AD-22-126

## Decision

[1] Leave (permission) to appeal is refused. The appeal will not be going ahead.

## Overview

[2] The Applicant, R. M. (Claimant), is appealing the General Division decision. The General Division found that the Claimant's reconsideration request to the Respondent, the Canada Employment Insurance Commission (Commission), was late. The General Division also found that the Claimant did not have a reasonable explanation for his delay and that he had not shown a continuing intention to ask for a reconsideration. The General Division concluded that the Commission did not have to reconsider its original decision.

[3] The Claimant argues that the General Division made a legal error. He argues that the General Division should not have denied his appeal on the basis that he was late in seeking a reconsideration. He argues that the General Division should have considered the substance of his appeal.

[4] Before the Claimant can move ahead with his appeal, I have to decide whether the appeal has a reasonable chance of success.<sup>1</sup> Having a reasonable chance of success is the same thing as having an arguable case.<sup>2</sup>

[5] I find that the Claimant does not have an arguable case. For that reason, I am refusing to give permission to the Claimant. The appeal will not go ahead.

## Issue

[6] Is there an arguable case that the General Division made a legal error by focusing on the Claimant's late reconsideration request?

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<sup>1</sup> Under section 58 (1) of the *Department of Employment and Social Development Act*, I am required to refuse permission if I am satisfied, "that the appeal has no reasonable chance of success."

<sup>2</sup> See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

## Analysis

[7] The Appeal Division must grant permission to appeal unless the appeal has no reasonable chance of success. A reasonable chance of success exists if there is a possible jurisdictional, procedural, legal, or certain type of factual error.<sup>3</sup>

[8] Once an applicant gets permission from the Appeal Division, they move to the actual appeal. There, the Appeal Division decides whether the General Division made an error. If it decides that the General Division made an error, then it decides how to fix that error.

### **Is there an arguable case that the General Division made a legal error by focusing on the Claimant's late reconsideration request?**

[9] The Claimant argues that the General Division made a legal error by focusing on his late reconsideration request to the Commission. The Claimant argues that this defies logic and is unfair, particularly as he has a compelling case on the merits of the matter.

[10] The Claimant says that he provided evidence that disproves the Commission's position that he voluntarily left his job. The Commission had refused the Claimant's application for Employment Insurance benefits on the basis that he had voluntarily left his employment without just cause.

[11] The Claimant says he has evidence that shows that he was continuously employed and had not voluntarily left his employment. His employer had initially provided a Record of Employment with incorrect information. His employer later provided an amended Record of Employment. The Amended Record of Employment showed that there was a shortage of work. In other words, the Claimant had not voluntarily left his employment without just cause.

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<sup>3</sup> See section 58(1) of the *Department of Employment and Social Development Act*. For factual errors, the General Division had to have based its decision on an error that was made in a perverse or capricious manner, or without regard for the evidence before it.

[12] The Claimant argues that the General Division should have considered the merits of his appeal. He contends that the General Division should have decided whether he was entitled to receive Employment Insurance benefits, or could have relied on insurable hours from his employment for any subsequent claims. This would have involved considering whether he had voluntarily left his job or faced a shortage of work.

[13] The Claimant does not otherwise dispute the fact that he was late when he asked the Commission to reconsider its original decision. The Commission issued its original decision on May 7, 2021.<sup>4</sup> The Claimant did not seek a reconsideration upon receiving the Commission's original decision. As he explained, he had started a new contract and was working again.<sup>5</sup>

[14] When the Claimant's final contract ended, he applied for Employment Insurance benefits again. It was only then that he discovered the employer's error in his Record of Employment. He immediately asked the Commission to reconsider its earlier decision in which it found that he had voluntarily left his employment.

– ***The Reconsideration Request Regulations***

[15] Under section 112 of the *Employment Insurance Act*, a claimant may make a reconsideration request to the Commission within 30 days after the day on which a decision is communicated to them, or “any further time that the commission may allow.”<sup>6</sup>

[16] The *Reconsideration Request Regulations* set out the circumstances in which the Commission may allow a longer period to make a reconsideration request. The Commission may allow longer period to make a request for reconsideration of a decision if the Commission is satisfied that:

- there was a reasonable explanation for requesting a longer period and

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<sup>4</sup> See Commission's letter dated May 7, 2021, at GD3-13.

<sup>5</sup> See Claimant's letter dated November 19, 2021, at GD3-26.

<sup>6</sup> See subsection 112(1)(b) of the *Employment Insurance Act*.

- the person has demonstrated a continuing intention to request a reconsideration.

[17] The Regulations also list other requirements when a person makes another application for benefits after the original decision was communicated to them. These additional requirements applied as the Claimant had made another application for benefits.

[18] With these additional requirements, the Commission also has to be satisfied that:

- the request for reconsideration has a reasonable chance of success and
- no prejudice would be caused to the Commission or a party by allowing a longer period to make the request.

[19] The Commission had to be satisfied that the Claimant met all four requirements before it could consider giving the Claimant a longer period to make a reconsideration request.

– **Whether the General Division made a legal error**

[20] The General Division determined that the Commission had not given the Claimant the opportunity to provide more details about his late reconsideration request. Even so, the General Division determined that ultimately the Claimant did not have a reasonable explanation for his delay and did not demonstrate a continuing intention to ask for a reconsideration.

[21] As the Claimant did not meet all four conditions, the Commission was left in a position where it was unable to accept the Claimant's late reconsideration request.

[22] The General Division did not make a legal error. The General Division did not have any discretion to disregard or overlook the requirements under the *Reconsideration Request Regulations*. It had to ensure that the Commission properly examined and applied the *Reconsideration Request Regulations*.

[23] I am not satisfied that the Claimant has an arguable case that the General Division made a legal error by failing to consider the merits of his appeal. The General Division had to examine whether the Commission properly refused to extend the time for the Claimant to make a reconsideration request.

– **Section 111 of the *Employment Insurance Act* – Rescission or amendment of decision**

[24] As an aside, I note that the General Division asked that the Commission consider the amended Record of Employment under section 111 of the *Employment Insurance Act*. The section allows the Commission to rescind or amend its decision if new facts are presented or if it is satisfied that the decision was given without knowledge of, or was based on a mistake as to, some material fact.

[25] The Commission is of the view that the section only applies if the issue has already been decided under section 112 of the *Employment Insurance Act* and the additional information relates exclusively to the same issue for which the reconsideration under section 112 took place.<sup>7</sup> The Commission maintained this position at a recent case conference.

[26] To be clear, I am not making a determination on this issue, but I do not see the basis upon for the Commission's views on section 111. If the Claimant is inclined to continue to pursue this matter, he can write and ask the Commission to make a formal decision under the section.

## **Conclusion**

[27] Permission to appeal is refused. This means that the appeal will not be going ahead.

Janet Lew  
Member, Appeal Division

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<sup>7</sup> See Commission's letter dated March 18, 2022, at AD2-1.