



Citation: *KR v Canada Employment Insurance Commission*, 2022 SST 293

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: K. R.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated November 17, 2021
(GE-21-1937)

Tribunal member: Jude Samson

Decision date: April 28, 2022

File number: AD-21-448

Decision

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

Overview

[2] K. R. is the Claimant in this case. She was out of work and receiving the Canada Recovery Benefit (CRB) from November 2020 to January 2021. The Canada Revenue Agency (CRA) suspended the Claimant's CRB payments, and later told her that she didn't qualify for the CRB. The Claimant then returned to work from about mid-January until May 8, 2021.

[3] The Claimant applied for Employment Insurance (EI) regular benefits on June 10, 2021. Given her situation, she asked the Canada Employment Insurance Commission (Commission) to treat her application as though it had received it earlier: on November 15, 2020.¹

[4] The Commission refused the Claimant's request saying that she hadn't shown good cause for the delay in submitting her application.

[5] The Claimant appealed the Commission's decision to the Tribunal's General Division. But it dismissed her appeal. The Claimant now wants to appeal the General Division decision to the Tribunal's Appeal Division, but she needs permission for her file to move forward.

[6] I sympathize with the Claimant's circumstances. However, I've found that her appeal has no reasonable chance of success. I have no choice, then, but to refuse permission to appeal.

¹ Backdating an application for EI benefits is sometimes called an "antedate."

Issue

[7] This decision focuses on one issue: Can it be argued that the General Division based its decision on an important mistake about the facts of the case?

Analysis

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

[9] The legal test the Claimant needs to meet at this step is low: Is there any arguable ground on which the appeal might succeed?² If the appeal has no reasonable chance of success, then I must refuse permission to appeal.³

[10] To decide this question, I focused on whether the General Division could have made a relevant error.⁴

There is no arguable ground on which the Claimant’s appeal might succeed

[11] The General Division had to decide whether the Claimant had good cause for delaying her application for EI benefits from November 15, 2020, to June 6, 2021.⁵

[12] Proving “good cause” can be difficult.⁶ 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.⁷ This includes an obligation to take reasonably prompt steps to determine if they qualified for benefits.

² This legal test is described in cases like *Osaj v Canada (Attorney General)*, 2016 FC 115 at paragraph 12 and *Ingram v Canada (Attorney General)*, 2017 FC 259 at paragraph 16.

³ This is the legal test described in section 58(2) of the *Department of Employment and Social Development Act* (DESD Act).

⁴ The relevant errors, formally known as “grounds of appeal,” are listed under section 58(1) of the DESD Act.

⁵ The “good cause” requirement comes from section 10(4) of the *Employment Insurance Act*.

⁶ 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 paragraph 4.

⁷ The Federal Court of Appeal recently summarized the test for “good cause” in *Canada (Attorney General) v Mendoza*, 2021 FCA 36 at paragraphs 13–14.

[13] These are some of the main reasons that the Claimant gave for delaying her application for EI benefits:

- She was confused about which benefits to apply for. She spoke to friends and decided to apply for the CRB. The CRA approved her application and started sending her payments.
- Around the time the CRA suspended her CRB payments, the Claimant returned to work. From about mid-January to May 8, 2021, the Claimant was working six days a week and homeschooling her child. She didn't have time to wait on hold for hours to try to figure out why her CRB payments had stopped.
- After her lay-off on May 8, 2021, the Claimant had more time. She eventually managed to contact the CRA, and was told to apply for EI benefits, which she did on June 10, 2021.

[14] However, the General Division wasn't satisfied that the Claimant had shown good cause for her delay, especially after she was laid off on May 8, 2021.

[15] The Claimant now seems to be arguing that the Commission should have backdated her claim to May 8, 2021, because she applied for EI benefits within about four weeks of when she stopped working.⁸

[16] When making this argument, I believe the Claimant is referring to an administrative policy by which the Commission automatically backdates some claims that are "submitted in a timely manner."⁹

[17] However, the Tribunal has to follow the requirements of the law. Unfortunately for the Claimant, there is no section of the *Employment Insurance Act* or *Employment Insurance Regulations* that allow me to automatically backdate her claim.

⁸ See pages AD1-4 and AD6-1.

⁹ The Commission's Administrative Policy, and its definition of claims "submitted in a timely manner," are described in chapter 3.1.1 of the *Digest of Benefit Entitlement Principles*.

[18] Instead, the Claimant is relying on Commission policy. However, the Tribunal is not guided by Commission policy, nor can it force the Commission to exercise its discretion in a certain way. That said, I would encourage the Commission to consider applying its administrative policy if it has not done so already.

[19] Importantly for this decision, the Claimant has not pointed to any mistaken facts that the General Division relied on when reaching its decision, especially between May 8 and June 10, 2021. During this period, the Claimant was not working and the CRA had suspended her CRB payments many months earlier.

[20] I must assume that the General Division considered all the evidence, even if it didn't mention every piece of it.¹⁰

[21] In addition, the Appeal Division's limited role does not allow me to intervene just to reweigh the evidence or to settle a disagreement about the application of settled legal principles to the facts of a case.¹¹

[22] For all these reasons, I've concluded that the Claimant's appeal has no reasonable chance of success.

[23] Aside from the Claimant's arguments, I also reviewed the file, listened to the audio recording of the General Division hearing, and examined the General Division decision.¹² The General Division summarized the law and used evidence to support its decision. I did not find evidence that the General Division might have ignored or misinterpreted.

¹⁰ See *Simpson v Canada (Attorney General)*, 2012 FCA 82 at paragraph 10.

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

¹² 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.

Conclusion

[24] I have concluded 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