



Citation: *YW v Canada Employment Insurance Commission*, 2022 SST 467

**Social Security Tribunal of Canada  
Appeal Division**

**Leave to Appeal Decision**

**Applicant:** Y. W.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated March 3, 2022  
(GE-22-191)

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**Tribunal member:** Charlotte McQuade

**Decision date:** June 3, 2022

**File number:** AD-22-212

## Decision

[1] I am refusing permission (leave) to appeal. The appeal will not proceed.

## Overview

[2] Y. W. is the Claimant. She was laid off from her employment on March 11, 2021. She applied for Employment Insurance (EI) regular benefits on August 2, 2021. The Canada Employment Insurance Commission (Commission) started her claim on August 1, 2021. The Claimant asked that her claim start earlier (antedate), on March 14, 2021. The Commission refused this request because it decided the Claimant had not shown good cause for the delay. The Claimant appealed that decision to the Tribunal's General Division.

[3] The Claimant told the General Division that initially she delayed in applying for EI benefits because her employer had given her three weeks' pay. She also had some savings and was hoping to go back to work as soon as possible. In addition, she was focused on looking after her son who was doing his schooling online, moving and looking for work. The Claimant was not aware there was a deadline to apply for EI benefits. She thought she would be paid retroactively when she applied.

[4] The General Division decided that the Claimant had not shown good cause for the delay so her claim could not start on March 14, 2021. The Claimant disagrees with the General Division's decision. She is now asking to appeal the General Division's decision to the Appeal Division. However, she needs permission for her appeal to move forward. The Claimant argues that the General Division didn't follow procedural fairness.

[5] I am satisfied that the Claimant's appeal has no reasonable chance of success so I am refusing permission to appeal.

## Issues

[6] The Claimant is raising one main issue: Is there an arguable case that the General Division didn't follow procedural fairness?

## Analysis

[7] The Appeal Division has a two-step process. First, the Claimant needs permission to appeal. If permission is denied, the appeal stops there. If permission is given, the appeal moves on to step two. The second step is where the merits of the appeal are decided.

[8] I must refuse permission to appeal if I am satisfied that the appeal has no reasonable chance of success.<sup>1</sup> The law says that I can only consider certain types of errors.<sup>2</sup> A reasonable chance of success means there is an arguable case that the General Division may have made at least one of those errors.<sup>3</sup>

[9] This is a low bar. Meeting the test for leave to be granted does not mean the appeal will necessarily succeed.

### **It is not arguable that the General Division failed to provide procedural fairness**

[10] It is not arguable that the General Division failed to provide procedural fairness by reaching a conclusion that the Claimant believes to be unfair.

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<sup>1</sup> Section 58(2) of the *Department of Employment and Social Development Act* (DESD Act) says this is the test I have to apply.

<sup>2</sup> Section 58(1) of the DESD Act describes the only errors that I can consider when deciding whether to give permission to proceed with an appeal. These errors are that the General Division breached natural justice, made an error of jurisdiction, made an error of law or based its decision on an important error of fact.

<sup>3</sup> See *Osaj v Canada (Attorney General)*, 2016 FC 115, which describes what a "reasonable chance of success" means.

[11] To receive EI regular benefits, you have to make an initial claim for benefits as well as ongoing claims for each week you are claiming benefits.<sup>4</sup> There are deadlines for filing claims.<sup>5</sup>

[12] If an initial claim is made late, it can be treated as if it was made earlier. However, the claimant needs to show good cause for the delay for the entire period of the delay and that the claimant qualified to receive benefits on the earlier day.<sup>6</sup>

[13] To show good cause, the law says that a claimant has to prove that they acted as a reasonable and prudent person would have acted in similar circumstances.<sup>7</sup> The claimant also has to show that the claimant took reasonably prompt steps to understand their entitlement to benefits and obligations under the law.<sup>8</sup> If the claimant did not do so, the claimant has to show that there were exceptional circumstances that excused them from doing so.<sup>9</sup>

[14] There is no dispute that the Claimant's initial claim was late. The General Division had to decide whether the Claimant had shown good cause for the entire period of the delay from March 14, 2021, to August 2, 2021.

[15] The General Division decided that the Claimant had not shown good cause for the delay so her claim could not be started from March 14, 2021.

[16] The Claimant says in her Application to the Appeal Division that the General Division didn't follow procedural fairness but she did not explain how that was the case. So, I asked the Tribunal to send the Claimant a letter asking her to explain in detail what was unfair about the General Division's process.

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<sup>4</sup> See section 49 of the *Employment Insurance Act* (EI Act) which says this.

<sup>5</sup> See section 26 of the *Employment Insurance Regulations* (EI Regulations) which explains the deadlines.

<sup>6</sup> See section 10(4) of the EI Act, which says this.

<sup>7</sup> See *Canada (Attorney General) v Burke*, 2012 FCA 139.

<sup>8</sup> See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

<sup>9</sup> See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

[17] The Claimant responded with a letter on May 25, 2022, but her explanation does not point to any procedural unfairness on the part of the General Division. Rather, the Claimant seems to be arguing that the General Division's conclusion that she cannot start her claim on March 14, 2021, is unfair.

[18] Specifically, the Claimant says that she decided to appeal to seek justice and fairness in her EI claim.<sup>10</sup> She says that she delayed in filing her claim because she did not want to claim the benefits if she did not need to and was hoping she could resume work in two to three months. However, it took longer than she thought and she did not realize there was a deadline in filing her claim.

[19] The Claimant also says that she was under mental stress from April to July 2022. She points out that she is a single parent who was taking care of a minor who was studying at home. She was also dealing with a move and actively looking for a job. The Claimant says that she could only do so much and those matters took all her time and energy. The Claimant maintains that this was more than a normal person could handle so she questions what the definition of "reasonable" was in the General Division's eyes.<sup>11</sup>

[20] There is no arguable case that the General Division failed to provide procedural fairness to the Claimant. The fairness of the result is not the same thing as a failure to provide procedural fairness. I can only intervene in a question of fairness if it involves the manner in which the General Division proceeded. For example, I can intervene if the General Division did something that might have compromised the Claimant's ability to know or respond to the case against her. The Claimant has not pointed to any unfairness of that type on the part of the General Division and I see no evidence of any procedural unfairness.

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<sup>10</sup> AD1B-2.

<sup>11</sup> AD1B-2.

**It is not arguable that the General Division made any other reviewable errors**

[21] It is not arguable that the General Division made an error of law, or an important error of fact or an error of jurisdiction.

[22] The law is settled concerning the requirements that must be met to antedate a claim. The General Division did not misinterpret or misapply that law. The General Division considered whether the Claimant had acted as a reasonable and prudent person would have done in her circumstances. The General Division also considered whether the Claimant took reasonably prompt steps to determine her entitlement to EI benefits and if not, whether there were exceptional circumstances that excused her from that obligation.

[23] The General Division understood that it had to decide how a reasonable and prudent person would have acted in the Claimant's particular circumstances and it considered the Claimant's particular circumstances.

[24] Specifically, the General Division acknowledged the Claimant's reasons for the delay. These were that her employer had paid her until March 31, 2021, and she thought that she would only be off work for a few months. She was a single mother of a 16-year-old son who was attending school online. She was moving and looking for work. She did not know there was a deadline to apply and thought that when she did the benefits would be paid retroactively.<sup>12</sup>

[25] However, the General Division concluded that a reasonable and prudent person in such circumstances would have taken steps to speak with a Service Canada agent to review their options within 2–4 weeks of being laid off, especially if faced with the prospect of depleting their savings and/or going into debt to survive between jobs. The General Division pointed out that by the Claimant's own admission, even as the weeks

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<sup>12</sup> See paragraphs 13 and 14 of the General Division decision.

went by, she didn't think there was any point in opening a claim for EI benefits if she was only going to be off work for "a few months."<sup>13</sup>

[26] The General Division also concluded that the Claimant did not take reasonably prompt steps to understand her rights and obligations. The General Division decided that waiting 20 weeks before applying was not taking reasonably prompt steps, especially as weeks went by and the Claimant was not recalled to work. Instead, the Claimant relied on her unverified assumption that she would be paid retroactively if she delayed.<sup>14</sup>

[27] The General Division also considered whether the Claimant's move and the fact she was looking after her son who was learning online were exceptional circumstances that excused her from the obligation to take reasonably prompt steps to understand her rights and obligations to claim EI benefits. The General Division acknowledged these were stressful experiences but decided they were not exceptional circumstances because parenting and moving are normal activities of life and would not have prevented the Claimant from contacting Service Canada to learn about her rights and obligations prior to August 2, 2021.

[28] I understand that the Claimant disagrees with the General Division's conclusion. She is repeating the same arguments she made at the General Division and asking me to come to a different conclusion. However, I cannot intervene in the General Division's conclusion where it correctly applies settled law to the facts.<sup>15</sup> An appeal to the Appeal Division of the Tribunal is not a new hearing, where a party can present their evidence and arguments again and ask for a different outcome.

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<sup>13</sup> See paragraph 17 of the General Division decision.

<sup>14</sup> See paragraph 17 of the General Division decision.

<sup>15</sup> See *Garvey v Canada (Attorney General)*, 2018 FCA 118.

[29] Aside from the Claimant's arguments, I have also reviewed the documentary file, listened to the audio tape from the General Division hearing.<sup>16</sup> The evidence supports the General Division's decision. I did not find evidence that the General Division might have ignored or misinterpreted.

[30] The Claimant has not raised an error of jurisdiction and I see no indication that such an error occurred. The General Division decided the issue it had to and did not decide anything it did not have the authority to decide.

[31] The Claimant has not identified any reviewable errors upon which her appeal has a reasonable chance of success.

## **Conclusion**

[32] I am refusing permission to appeal. This means that the appeal will not proceed.

Charlotte McQuade  
Member, Appeal Division

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<sup>16</sup> The case of *Karadeolian v Canada (Attorney General)*, 2016 FC 615 recommends doing such a review.