



Citation: *RH v Canada Employment Insurance Commission*, 2022 SST 538

**Social Security Tribunal of Canada
Appeal Division**

Leave to Appeal Decision

Applicant: R. H.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated April 7, 2022
(GE-22-416)

Tribunal member: Pierre Lafontaine

Decision date: June 20, 2022

File number: AD-22-316

Decision

[1] Leave to appeal is refused. This means the appeal will not proceed.

Overview

[2] The Applicant (Claimant) applied for Employment Insurance (EI) benefits on June 29, 2021. He asked that his application start earlier, that is May 10, 2021. The Respondent (Commission) determined that the Claimant did not have good cause for the entire delay. It refused the Claimant's request. The Claimant appealed the refusal to the General Division.

[3] The General Division found that a reasonable and prudent person in the Claimant's circumstances would have made inquiries with the Commission about his rights and obligations while he was looking for a job. It found that the Claimant did not present any exceptional circumstances preventing him from applying for the entire period of delay. The General Division concluded that the Claimant did not prove good cause because he did not act as a reasonable and prudent person in similar circumstances for the entire delay.

[4] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. He submits that the General Division failed to observe a principle of natural justice and did not consider the evidence before it.

[5] I must decide whether the Claimant raised some reviewable error of the General Division upon which the appeal might succeed.

[6] I refuse leave to appeal because the Claimant's appeal has no reasonable chance of success.

Issue

[7] Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

Analysis

[8] Section 58(1) of the *Department of Employment and Social Development Act* specifies the only grounds of appeal of a General Division decision. These reviewable errors are that:

1. The General Division hearing process was not fair in some way.
2. The General Division did not decide an issue that it should have decided. Or, it decided something it did not have the power to decide.
3. The General Division based its decision on an important error of fact.
4. The General Division made an error of law when making its decision.

[9] An application for leave to appeal is a preliminary step to a hearing on the merits. It is an initial hurdle for the Claimant to meet, but it is lower than the one that must be met on the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove his case but must establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, that there is arguably some reviewable error upon which the appeal might succeed.

[10] Therefore, before I can grant leave, I need to be satisfied that the reasons for appeal fall within any of the above-mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success.

Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

[11] In support of his application for leave to appeal, the Claimant submits that the General Division failed to observe a principle of natural justice and rendered a decision without regard for the material before it.

[12] More precisely, the Claimant submits that the General Division did not ask him questions that would have allowed him to show that he did what any reasonable person in his situation would have done. He puts forward that he was going through a lot of stress during that period and did not know his application was late until he started the application process. He submits that while he did have access to a phone and internet, he could not know that he was late until he actually applied for benefits.

[13] To establish good cause, a claimant must be able to show that they did what a reasonable person in their situation would have done to satisfy themselves as to their rights and obligations under the law.¹

[14] The General Division found that a reasonable and prudent person in the Claimant's circumstances would have made inquiries with the Commission about his rights and obligations while he was looking for a job. It found that the Claimant did not present any exceptional circumstances preventing him from applying for the entire period of delay. The General Division concluded that the Claimant did not prove good cause because he did not act a reasonable and prudent person in similar circumstances for the entire delay period.

[15] On July 29, 2021, the Claimant declared to the Commission that he did not know he had to apply right away and that he was looking for a job before applying for benefits.²

¹ Section 10(4) of the *Employment Insurance Act* (EI Act).

² See GD3-19.

[16] On October 28, 2021, when asked again by the Commission why he did not apply sooner, the Claimant stated that he was working on a degree and that he was thinking he would find a job right away.³

[17] During the General Division hearing, the Claimant reiterated on several occasions that he was looking for a job during the entire delay and did not think he had to apply right away.

[18] A claimant as an obligation to make prompt inquiries with the Commission to verify eligibility.⁴ Ignorance of the process, even coupled with good faith, does not constitute good cause under the law.⁵

[19] Although the Claimant was laid off from his job effective May 7, 2021, the undisputed evidence before the General Division shows no effort on his part to determine his entitlement or to verify his obligations under the law until June 29, 2021.

[20] The General Division correctly determined that a delay in applying based on the Claimant's efforts to find work does not constitute good cause under the law. Unfortunately, for the Claimant, waiting to find work rather than immediately applying for benefits, while laudable, does not provide good cause for delay as required by law.⁶

[21] After listening to the recording of the General Division hearing, I note that the General Division member exercised her role as the trier of facts. She asked the Claimant numerous questions to determine why he did not apply for benefits immediately after he stopped working.

³ See GD3-20.

⁴ *Canada (Attorney General) v Innes*, 2011 FCA 341; *Canada (Attorney General) v Thrinh*, 2010 FCA 335; *Howard v Canada (Attorney General)*, 2011 FCA 116; *Shebib v Canada (Attorney General)*, 2003 FCA 88.

⁵ *Attorney General of Canada v Kaler*, 2011 FCA 266; *Canada (Attorney General) v Persiiantsev*, 2010 FCA 101.

⁶ *Howard v Canada (Attorney General)*, 2011 FCA 116; *Shebib v Canada (Attorney General)*, 2003 FCA 88.

[22] The General Division member summarized the Claimant's reasons for applying late and the Claimant agreed with the summary. At the end of the hearing, the member asked the Claimant if he wanted to add anything but the Claimant indicated that he had nothing else to add to his testimony.

[23] I cannot find that the General Division hearing process was not fair in some way.

[24] It is also well established that it is not and cannot be the role of the General Division to provide legal advice to claimants. It was therefore not incumbent on the General Division member to ensure that the Claimant presented all the facts necessary to support his appeal.⁷

[25] After reviewing the appeal file, and the General Division's decision, as well as considering the Claimant's arguments in support of his request for leave to appeal, I have no choice but to find that the appeal has no reasonable chance of success. The Claimant has not set out a reason, which falls into the above-enumerated grounds of appeal that could possibly lead to the reversal of the disputed decision.

Conclusion

[26] Leave to appeal is refused. This means the appeal will not proceed.

Pierre Lafontaine
Member, Appeal Division

⁷ *A. P. v Canada Employment Insurance Commission*, 2017 SSTADEI 409.