



Citation: *SA v Canada Employment Insurance Commission*, 2022 SST 582

**Social Security Tribunal of Canada  
Appeal Division**

**Leave to Appeal Decision**

**Applicant:** S. A.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated March 25, 2022  
(GE-22-347)

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**Tribunal member:** Charlotte McQuade

**Decision date:** June 30, 2022

**File number:** AD-22-281

## Decision

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

## Overview

[2] S. A. is the Claimant. He applied for Employment Insurance (EI) regular benefits on September 1, 2021. His application was late. The Claimant asked the Canada Employment Insurance Commission (Commission) to treat his claim as though it was made earlier, on April 18, 2021.<sup>1</sup>

[3] The Commission decided the Claimant had not shown good cause for the delay so his claim could not start on April 18, 2021.

[4] The Claimant appealed the Commission's decision to the Tribunal's General Division, who dismissed his appeal.

[5] The Claimant is now asking to appeal the General Division's decision to the Appeal Division. However, he needs permission for his appeal to move forward. The Claimant argues that the General Division made an important error of fact.

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

## Issue

[7] The Claimant is raising one main issue: Is it arguable that the General Division based its decision on an important error of fact?

## Analysis

[8] 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

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<sup>1</sup> See GD3-17.

given, the appeal moves on to step two. The second step is where the merits of the appeal are decided.

[9] I must refuse permission to appeal if I am satisfied that the appeal has no reasonable chance of success.<sup>2</sup> The law says that I can only consider certain types of errors.<sup>3</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>4</sup>

[10] 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 based its decision on an important error of fact**

[11] The General division decided the Claimant could not start his claim on April 18, 2021, as he had not shown good cause for the delay between April 18, 2021, and September 1, 2021. It is not arguable that the General Division based this decision on an important error of fact.

[12] The Claimant applied for EI benefits on September 1, 2021, and the Commission started his benefit period on August 29, 2021. The Claimant wants his benefit period to start on April 18, 2021.<sup>5</sup>

[13] 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. There are deadlines for filing claims.<sup>6</sup>

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<sup>2</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>3</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>4</sup> See *Osaj v Canada (Attorney General)*, 2016 FC 115, which describes what a “reasonable chance of success” means.

<sup>5</sup> See GD3-17.

<sup>6</sup> See section 26 of the *Employment Insurance Regulations* (EI Regulations) which explains the deadlines.

[14] 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>7</sup>

[15] 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>8</sup>

[16] A claimant also has to show that the claimant took reasonably prompt steps to understand their entitlement to benefits and obligations under the law.<sup>9</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>10</sup>

[17] 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 April 18, 2021, to September 1, 2021.

[18] In its decision, the General Division referred to the Claimant's reasons for delaying his claim for EI benefits which were:<sup>11</sup>

- When he applied in 2011/2012, he didn't have enough hours to qualify for benefits. He believed he wouldn't qualify for EI benefits because he had worked fewer hours in 2020/2021 than he had in 2011/2012;
- He was involved in intensive study for a comprehensive examination between May 21, 2021, and June 21, 2021. He hadn't planned to take the examination then and he felt sick near the end of his examination preparations;
- He had other things going on that affected him psychologically. He was working and researching, and dealing with his professor, other departments, family, and

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<sup>7</sup> See section 10(4) of the EI Act, which says this.

<sup>8</sup> See *Canada (Attorney General) v Burke*, 2012 FCA 139.

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

<sup>10</sup> See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

<sup>11</sup> See paragraph 16 of the General Division decision.

his landlord. He needed time to consider these things, and become motivated again after bullying and harassing treatment;

- He applied for benefits as soon as he could. It was difficult to find the motivation, but he applied, even though he assumed he wasn't eligible;
- Despite what was going on, had he known about his eligibility for EI benefits, he would have applied earlier;
- He wasn't brought up in Canada, so isn't keen on his rights.

[19] The General Division also referred to the Claimant's evidence that, although the Claimant contacted Canada Revenue Agency (CRA) about the Canada Emergency Response Benefit (CERB) and Canada Recovery Benefit (CRB), he had not contacted the Commission to enquire about his eligibility for EI benefits.<sup>12</sup>

[20] The General Division considered the Claimant's reasons for delaying but decided that the Claimant hadn't shown good cause for the delay. The General Division concluded that the Claimant was aware of changes to benefits provided to Canadians, as he was aware of the CERB and the CRB benefit. He was also aware of the EI system, having applied in the past.

[21] The General Division decided that it was not enough that the Claimant thought he wouldn't qualify for EI benefits to show good cause. The General Division referred to binding case law from the Federal Court of Appeal that says ignorance of the law, even if coupled with good faith, is not sufficient to establish good cause.<sup>13</sup>

[22] The General Division decided that a reasonable and prudent person in the Claimant's circumstances would have not relied on his long-past experience to

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<sup>12</sup> See paragraph 17 of the General Division decision.

<sup>13</sup> See paragraph 24 of the General Division decision referring to *Canada (Attorney General) v Kaler*, 2011 FCA 266.

determine his eligibility for EI benefits and would have contacted Service Canada (by telephone or in person), or looked online to see how to apply for EI benefits.<sup>14</sup>

[23] The General Division also decided the Claimant didn't take prompt steps to find out about EI benefits because he didn't make any enquiries with Service Canada until he applied for EI benefits.<sup>15</sup>

[24] The General Division also considered the Claimant's personal difficulties but decided they did not excuse him from the obligation to take reasonably prompt steps to understand his rights and obligations under the law. The General Division noted the Claimant's circumstances were not exceptional, given people applying for EI benefits often are in difficult situations in addition to the loss of their job.<sup>16</sup>

[25] The Claimant submits in his Application to the Appeal Division that the General Division based its decision on an important error of fact. He says he did not check with the Commission about whether he would be eligible for EI benefits as his understanding of EI benefits and the information he came across did not lead him to check with the Commission. He explains that once in the past he had received limited EI benefits for 10 months of full-time hours. He also says that even if he did not act prudently during the period of delay, the difficulties he was facing caused or led to this situation. He says during this troubled time he stopped keeping in touch with his friends and did not have a cell phone.<sup>17</sup>

[26] The Claimant's submissions did not explain how the General Division had made an error of fact so I asked the Tribunal to send the Claimant a letter asking him to provide more detail about that. However, the Claimant did not respond to that letter.

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<sup>14</sup> See paragraphs 22 to 24 of the General Division decision.

<sup>15</sup> See paragraph 25 of the General Division decision.

<sup>16</sup> See paragraph 26 of the General Division decision.

<sup>17</sup> See AD1-4.

[27] For the Appeal Division to intervene on an error of fact, the General Division must have based its decision on an error of fact. Also, the error of fact must have made in a perverse or capricious manner or without regard for the material before it.<sup>18</sup>

[28] It is not arguable that the General Division based its decision on an error of fact. The Claimant has not pointed to any mistaken facts that the General Division relied on when reaching its decision.

[29] The General Division was aware the Claimant had a long past experience with EI benefits which led him to believe he would not qualify.<sup>19</sup> The General Division was aware that the Claimant had contacted the Canada Revenue Agency and relied on information from his employer (or union) about the CERB and CRB benefits, but had not contacted the Commission for information as he assumed he would not qualify for EI benefits.<sup>20</sup> The General Division was aware of the Claimant's personal difficulties.<sup>21</sup> The General Division considered all of these facts when it decided the Claimant did not have good cause for the delay.

[30] I understand that the Claimant disagrees with the General Division's conclusion. He is repeating the same information he provided to the General Division. However, I cannot intervene in the General Division's conclusion where it applies settled law to the facts.<sup>22</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.

[31] 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. The General Division's findings of fact are consistent with the evidence on file. I am satisfied that the General Division did not ignore or misconstrue any of the evidence before it.

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<sup>18</sup> See section 58(1)(c) of the DESD Act.

<sup>19</sup> See paragraph 22 of the General Division decision.

<sup>20</sup> See paragraph 23 and paragraph 24 of the General Division decision.

<sup>21</sup> See paragraph 16 and paragraph 26 of the General Division decision.

<sup>22</sup> See *Garvey v Canada (Attorney General)*, 2018 FCA 118.

[32] The General Division correctly stated and applied settled law to the facts. The Claimant has not pointed to any errors of jurisdiction or breaches of procedural fairness by the General Division and I have not identified any such errors in my review of the audio tape and record.

## **Conclusion**

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

Charlotte McQuade  
Member, Appeal Division