



Citation: *AA v Canada Employment Insurance Commission*, 2022 SST 618

**Social Security Tribunal of Canada
Appeal Division**

Leave to Appeal Decision

Applicant: A. A.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated March 9, 2022
(GE-22-266)

Tribunal member: Melanie Petrunia

Decision date: July 10, 2022

File number: AD-22-223

Decision

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

Overview

[2] The Applicant, A. A. (Claimant), was receiving employment insurance (EI) benefits. Her benefit period began on May 2, 2021. She completed renewal claims for the period from May 2, 2021 to June 29, 2021. She did not make further renewal claims until September 12, 2021. This was after the deadline.

[3] The Commission started the claim again from September 5, 2021. It decided that the Claimant did not have good cause for the delay in filing her renewal claims. The Claimant appealed this decision to the General Division.

[4] The General Division found that the Claimant did not show good cause for delay in filing her claimant reports (renewal claims) for the period from June 28, 2021 to September 4, 2021. The General Division concluded that she could not be paid benefits for this period.

[5] The Claimant now wants to appeal the General Division decision to the Tribunal's Appeal Division. She argues that the General Division made important errors of fact.

[6] I have to decide whether there is some reviewable error of the General Division on which the appeal might succeed. I am refusing leave to appeal because the Claimant's appeal has no reasonable chance of success.

Issue

[7] Is there an arguable case that the General Division made important errors of fact?

Analysis

[8] The *Department of Employment and Social Development Act* (DESD Act) sets out the only grounds of appeal of a General Division decision.¹ An appeal is not a rehearing of the original claim. Instead, I must decide whether the General Division:

- a) failed to provide a fair process;
- b) failed to decide an issue that it should have, or decided an issue that it should not have;
- c) based its decision on an important factual error;² or
- d) made an error in law.³

[9] Before the Claimant can move on to the next stage of the appeal, I have to be satisfied that there is a reasonable chance of success based on one or more of these grounds of appeal. A reasonable chance of success means that the Claimant could argue her case and possibly win.

[10] I will grant leave if I am satisfied that at least one of the Claimant's stated grounds of appeal gives the appeal a reasonable chance of success. It is a lower threshold than the one that must be met when the appeal is heard on the merits later on in the process if leave to appeal is granted.

[11] Before I can grant leave to appeal, I need to be satisfied that the Claimant's arguments fall within any of the grounds of appeal stated above and that at least one of

¹ DESD Act, s 58(2).

² The language of section 58(1)(c) actually says that the General Division will have erred if it bases its decision on a finding of fact that it makes in a perverse or capricious manner or without regard for the material before it. The Federal Court has defined perverse as "willfully going contrary to the evidence" and defined capricious as "marked or guided by caprice; given to changes of interest or attitude according to whim or fancies; not guided by steady judgment or intent" *Rahi v Canada (Minister of Citizenship and Immigration)* 2012 FC 319.

³ This paraphrases the grounds of appeal.

these arguments has a reasonable chance of success. I should also be aware of other possible grounds of appeal not precisely identified by the Claimant.⁴

Is there an arguable case that the General Division made important errors of fact?

[12] In her application for leave to appeal, the Claimant states that the General Division made important errors of fact. She states that the General Division found that her circumstances were the same when she missed her reports as they were when she completed them on time. She argues that this was not accurate.

[13] The Claimant says that she missed the deadline to file her renewal claims when she was moving to a small town. She argues that this was a major change in circumstances and that the move took weeks to complete. She says that this was a significant personal matter and should be considered good cause for delay.

[14] The Claimant also states that she was a first-time EI claimant and was not aware of a deadline. She argues that being withheld payments is a very harsh punishment for a minor error.

[15] The Appeal Division can intervene only if the General Division based its decision on the error of fact. In addition, the General Division must have made that error of fact in a perverse or capricious manner or without regard for the material before it.⁵

[16] The General Division outlined the facts that it took into consideration in its decision. It noted that the Claimant had to move and that this was an emotional transition.⁶ The Claimant was overwhelmed and was dealing with many other things at the time.⁷

[17] The Claimant explained at the hearing before the General Division that she had a lot on her mind and that she was not aware that there was a deadline for completing her

⁴ *Karadeolian v Canada (Attorney General)*, 2016 FC 615; *Joseph v Canada (Attorney General)*, 2017 FC 391.

⁵ See section 58(1)(c) of the DESD Act.

⁶ General Division decision at para 21.

⁷ General Division decision at para 22.

reports.⁸ The General Division decision also notes that this was the Claimant's first EI claim and she felt she should not be penalized for her mistake.⁹

[18] The General Division took these facts into consideration. It found that the reasons for the delay were that the Claimant was dealing with many personal issues, including her move.¹⁰ It also found that she did not know that there was a deadline to complete the reports.¹¹

[19] The law says that the Claimant has to prove that she had good cause for the delay in completing her reports during the entire period of delay.¹² This means that she has to prove that she acted as a reasonable and prudent person would have acted in similar circumstances.¹³ She also has to show that she took reasonably prompt steps to understand her obligations under the law and her entitlement to benefits.¹⁴

[20] The General Division took into account the facts set out in the Claimant's Application for Leave to Appeal. It determined that these reasons were not sufficient to prove that the Claimant had good cause for the delay.¹⁵

[21] The General Division considered that the Claimant did not make any enquiries with the Commission about the deadline for filing claimant reports. It also found that she did not carefully read the statement at the end of prior claimant reports which provided a reminder of the deadline. It found that this was not acting as a reasonable and prudent person would have in her circumstances.¹⁶

[22] The General Division noted that the Claimant was dealing with many significant personal matters, including her move. However, it found that these personal matters did

⁸ General Division decision at para 22.

⁹ General Division decision at para 23.

¹⁰ General Division decision at para 28.

¹¹ General Division decision at para 28.

¹² See section 10(5) of the EI Act and *Paquette v Canada (Attorney General)*, 2006 FCA 309.

¹³ See *Canada (Attorney General) v Burke*, 2012 FCA 139.

¹⁴ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

¹⁵ General Division decision at para 29.

¹⁶ General Division decision at para 30.

not amount to exceptional circumstances that prevented the Claimant from complying with her obligations.¹⁷

[23] The General Division has the authority to weigh the evidence before it and to decide which evidence it will prefer. I cannot reweigh the evidence in a different way and come to a different conclusion.

[24] The General Division took into consideration all of the facts that the Claimant points to in her Application for Leave to Appeal. There is no arguable case that the General Division based its decision on an important error of fact.

There is no arguable case that the General Division made any other reviewable errors

[25] The Claimant also states in her application for leave to appeal that she did not have access to legal counsel, which put her at a disadvantage. This argument does not fall under any of the permitted grounds of appeal. It is well established in case law that not having legal representation is not grounds for overturning a decision.¹⁸

[26] Aside from the Claimant's arguments, I have also considered other grounds of appeal.

[27] The Claimant has not pointed to any procedural unfairness on the part of the General Division and I see no evidence of procedural unfairness. There is no arguable case that the General Division made an error of jurisdiction. I have not identified any errors of law.

[28] The Claimant has not identified any errors of the General Division upon which the appeal might succeed. As a result, I am refusing leave to appeal.

¹⁷ General Division decision at para 33.

¹⁸ See, for example, *Cornejo Arteaga v Canada (Citizenship and Immigration)*, 2010 FC 868.

Conclusion

[29] Permission to appeal is refused. This means that the appeal will not proceed.

Melanie Petrunia
Member, Appeal Division