[TRANSLATION]

Citation: *FI v Canada Employment Insurance Commission*, 2022 SST 766

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	F. I.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated June 16, 2022 (GE-22-1057)

Tribunal member:	Pierre Lafontaine
Decision date:	August 15, 2022
File number:	AD-22-422

Decision

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

Overview

[2] The Applicant (Claimant) applied for Employment Insurance (EI) sickness benefits on September 22, 2021. She asked that the application be treated as though it had been made earlier, on November 20, 2020. To explain the delay in making her renewal claim, the Claimant said she was not aware that she was entitled to EI sickness benefits during that period. She applied for them right after a friend told her about them.

[3] The Commission denied the Claimant's request. The Claimant requested a reconsideration of that decision, but the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the Tribunal's General Division.

[4] The General Division found that the Claimant had not acted as a reasonable and prudent person would have acted in the circumstances, since she made no effort to find out about her entitlement before September 2021. The General Division decided that the Claimant had not proven that she had good cause for the delay throughout the entire period of the delay. As a result, there was no reason to grant the antedate request.

[5] The Claimant seeks leave from the Appeal Division to appeal the General Division decision. She argues that she is telling the truth that she did not know she was entitled to sickness benefits. She does not understand why her application was denied, since she had no income for eight months and it was her first claim.

[6] I have to decide whether there is an arguable case that the General Division made a reviewable error based on which the appeal has a reasonable chance of success.

[7] I am refusing leave to appeal because the Claimant has not raised a ground of appeal based on which the appeal has a reasonable chance of success.

Issue

[8] Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

Analysis

[9] 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 the following:

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.

[10] 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 has to be met at the hearing of the appeal on the merits.

[11] At the leave to appeal stage, the Claimant does not have to prove her case. Instead, she has to establish that the appeal has a reasonable chance of success. In other words, she has to show that there is arguably a reviewable error based on which the appeal might succeed.

[12] I will grant leave to appeal if I am satisfied that at least one of the Claimant's stated grounds of appeal gives the appeal a reasonable chance of success.

Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

[13] The Claimant argues that she is telling the truth that she did not know she was entitled to sickness benefits. She does not understand why her application was denied, since she had no income for eight months and it was her first claim.

[14] To establish good cause under the law, a claimant has to be able to show that they did what a reasonable person in their situation would have done to make sure they were aware of their rights and obligations under the *Employment Insurance Act* (EI Act).[1]

[15] The General Division decided that the Claimant had not proven good cause because she did not act as a reasonable and prudent person would have acted in similar circumstances for the entire period of the delay. The General Division found that a reasonable and prudent person in the Claimant's situation would have researched their rights and obligations much sooner than September 2021.

[16] It is well established that a claimant has an obligation to promptly check with the Commission to verify their entitlement to benefits.[2] It is also well established that ignorance of the process, even in good faith, is not enough to establish good cause for a delay under the law.[3]

[17] The undisputed evidence before the General Division shows that the Claimant made no effort to confirm what her rights and obligations were under the EI Act before September 2021.

[18] The General Division correctly found that a delay in applying because of ignorance of the law, even in good faith, does not constitute good cause under the law.

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[1] See section 10(4) of the *Employment Insurance Act*.
[2] *Canada (Attorney General) v Innes*, 2011 FCA 341; *Canada (Attorney General) v Trinh*, 2010 FCA 335; *Howard v Canada (Attorney General)*, 2011 FCA 116; *Shebib v Canada (Attorney General)*, 2003 FCA 88.
[3] *Attorney General of Canada v Kaler*, *2011 FCA 266*; *Canada (Attorney General) v Persiiantsev*, 2010 FCA 101.

[19] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for leave to appeal, I have no choice but to find that the appeal has no reasonable chance of success.

Conclusion

[20] Leave to appeal is refused. The appeal will not proceed.

Pierre Lafontaine
Member, Appeal Division