



Citation: *SA v Canada Employment Insurance Commission*, 2022 SST 782

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: S. A.

Respondent: Canada Employment Insurance Commission
Representative: Julie Villeneuve

Decision under appeal: General Division decision dated February 18, 2022
(GE-22-138)

Tribunal member: Charlotte McQuade

Type of hearing: Teleconference

Hearing date: July 5, 2022

Hearing participant: Appellant

Decision date: August 19, 2022

File number: AD-22-155

Decision

[1] I am dismissing the appeal.

[2] The General Division did not make any errors that allow me to intervene in its decision.

Overview

[3] S. A. is the Claimant. She was late when she made her biweekly claimant reports for Employment Insurance (EI) regular benefits on July 2, 2021. She asked the Canada Employment Insurance Commission (Commission) to backdate (antedate) those claims to treat them as though they had been made earlier, on October 4, 2020.

[4] The Claimant says the reason for her delay was that, after receiving the Canada Emergency Response Benefit (CERB), she called the Commission to ask whether she was entitled to EI benefits, since she was going back to work part-time. She says she was given incorrect information that she could not get EI benefits while working part-time. The Commission refused her request to backdate, not accepting her reason as good cause for the delay from October 4, 2020, to July 2, 2021. In other words, the Commission decided that she hadn't given an explanation the law accepts.

[5] The Claimant appealed the Commission's decision to the Tribunal's General Division. The General Division dismissed the Claimant's appeal, also not accepting her reason as good cause for the delay from October 4, 2020, to July 2, 2021.

[6] The Claimant appealed the General Division's decision. She says that the General Division did not follow procedural fairness and either made an error of law or based its decision on an important error of fact when it concluded she had not shown good cause for the delay.

[7] I have decided that the General Division did not make any of these errors. As a result, I have to dismiss the Claimant's appeal.

Issues

[8] The issues in this appeal are the following:

- a) Did the General Division fail to follow procedural fairness?
- b) Did the General Division make an error of law or base its decision on an important error of fact when it concluded the Claimant had not shown good cause for the delay?

Analysis

The General Division followed procedural fairness

[9] The General Division followed procedural fairness.

[10] The General Division decided the Claimant could not backdate her claimant reports to October 4, 2020, because she had not shown good cause for the delay from October 4, 2020, to July 2, 2021.

[11] The Claimant argues that the General Division did not follow procedural fairness. She says this is because the General Division's decision is unfair. She says the delay was the Commission's fault because they gave her inaccurate information.

[12] The Commission says there is nothing in the General Division's decision to suggest that it did not follow the rules of procedural fairness.

[13] I understand that the Claimant thinks the General Division's conclusion is unfair. However, procedural fairness is concerned with how the General Division conducted the proceeding, not with the conclusion it reached.

[14] I can intervene in a question of fairness if, for example, the General Division did something that might have compromised a claimant's ability to know or respond to the case against them. I can also intervene if the General Division approached its decision-making in a biased way or was not impartial.

[15] The Claimant has not pointed to any unfairness in the way the General Division conducted its proceeding, and I see no evidence of any procedural unfairness.

The General Division did not make an error of law or base its decision on an important error of fact

[16] There is no dispute that the Claimant's biweekly claims were late. The Claimant wants them to be treated as though they were made earlier, on October 4, 2020.

[17] If a claim is filed late, it can be treated as though it was made earlier. However, the law says that, for this to happen, the claimant requesting the backdate needs to show good cause for the entire period of the delay.¹

[18] So, the General Division had to decide whether the Claimant had shown good cause for the entire period of the delay from October 4, 2020, to July 2, 2021.

[19] To show good cause, a claimant has to prove that they acted as a reasonable and prudent person would have acted in similar circumstances.² They also have to show that they took reasonably prompt steps to understand their entitlement to benefits and obligations under the law.³ If they did not do so, they have to show that there were exceptional circumstances to excuse them from doing so.⁴

[20] The Claimant told the General Division that she had applied for and received EI benefits while working part-time in the past. She said she had completed biweekly reports, declaring her hours and earnings, and the Commission would pay her based on the information she had given.⁵

[21] The Claimant also told the General Division that, when she went to apply for EI benefits at the end of June 2020, she was told that there was a "different program."

¹ See section 10(5) of the *Employment Insurance Act*.

² See *Canada (Attorney General) v Burke*, 2012 FCA 139.

³ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

⁴ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

⁵ See paragraph 21 of the General Division decision.

She applied and completed biweekly reports, and she received the CERB payments for the months of July, August, and September 2020.⁶

[22] At the end of September 2020, the Claimant called the Commission to find out whether she was entitled to EI benefits, since she was going back to work part-time. She told the General Division that the agent had told her that, because she was going back to work, she was not entitled to benefits.⁷

[23] She also told the General Division that she had not received the emails the Commission says it sent to claimants advising them of the transition from the CERB to EI benefits.⁸ She testified that, if she had received those emails, she would have called the Commission back.⁹

[24] The General Division decided the Claimant had not shown good cause for the delay, so her biweekly claims could not be backdated to October 4, 2020.

[25] The General Division accepted that the Claimant had understood from her conversation with a Commission agent that she could not get EI benefits while working part-time. The General Division also accepted that the Claimant had not received the Commission's emails about the transition from the CERB to EI regular benefits.¹⁰

[26] Despite those facts, the General Division decided that the Claimant had not acted as a reasonable and prudent person would have acted in similar circumstances.

[27] The General Division said this was because the Claimant had applied for and received EI benefits while working part-time in the past, and she had gotten those benefits by completing biweekly reports. The General Division decided that, given this experience, the Claimant could have done more to understand her entitlement to EI benefits than just speaking to one Commission agent.¹¹

⁶ See paragraphs 17 to 19 of the General Division decision.

⁷ See paragraph 18 of the General Division decision.

⁸ See paragraph 19 of the General Division decision.

⁹ I heard this from the audio recording of the General Division hearing at approximately 0:24:34.

¹⁰ See paragraph 20 of the General Division decision.

¹¹ See paragraphs 21 to 23 of the General Division decision.

[28] The General Division considered whether the Claimant had shown exceptional circumstances, and it decided she had not. The General Division acknowledged that claimants “may have been confused, generally, with the different kinds of pandemic-related benefits and how this affected regular EI benefits.”¹² However, the General Division did not find that to be an exceptional circumstance that excused the Claimant from taking reasonably prompt steps to confirm her rights and obligations to get EI benefits.

[29] The Claimant says that, in concluding she did not have good cause, the General Division was wrong:

- to say she could have done more to understand her rights, when it accepted that she had been misadvised by the Commission and that she had not received the Commission’s emails saying she was being transitioned from the CERB to EI regular benefits
- to compare her actions with her past situation while getting EI regular benefits, when this was a special case, and she was unaware of what to do.

[30] The Claimant was not specific as to what kind of errors these were, but I understand her to be arguing that the General Division either made an error of law or based its decision on important error of fact when it concluded as it did.

[31] The Commission argues that the General Division did not make an error of law or base its decision on an important error of fact.

[32] The Commission says the General Division recognized the Claimant’s reason for delay. The General Division understood that the Claimant called the Commission at the end of September 2020 because she wanted to know whether she was entitled to EI benefits while working part-time. The Claimant understood from that conversation that she was not entitled while working part-time.

¹² See paragraph 24 of the General Division decision.

[33] The Commission says the General Division also accepted that the Claimant had not received the Commission's emails saying she was being transitioned from the CERB to EI benefits.

[34] However, the Commission argues that the General Division also considered that the Claimant had applied for EI benefits, filed claimant reports, and received EI benefits while working part-time in the past. So, the Commission says the General Division correctly acknowledged that it was not the Claimant's first EI application and that she had some experience of the application process.

[35] The Commission argues that the General Division considered the evidence and was entitled to decide, as the trier of fact, that:

- the Claimant had not acted as a reasonable person in her situation would have acted to understand their entitlement
- there was no evidence of exceptional circumstances that excused her from that obligation.

[36] The Commission argues that, in reaching its decision, the General Division applied the correct law, considered all of the Claimant's arguments, and provided reasons for its findings. The General Division's decision was also based on the evidence that was before it.

– **The General Division did not make an error of law**

[37] The General Division did not misinterpret or misapply the law when it concluded the Claimant's reports could not be backdated.

[38] Delay attributable to incorrect advice from the Commission can amount to good cause.¹³ But this is not always the case. It depends on the facts of the case.

[39] The General Division did not refer to the law about incorrect advice in its decision. However, I am satisfied that it did consider the Claimant's understanding, from

¹³ See *Pirotte v Unemployment Insurance Commission*, A-108-76.

her conversation with the Commission, that she could not get EI benefits while working part-time. It also considered the fact she had not received the Commission's emails saying she was being transitioned from the CERB to EI benefits. It referred to these facts in its decision.¹⁴

[40] However, the General Division also considered that the Claimant had a history of working part-time, completing claimant reports, and receiving EI benefits. Given that history, the General Division decided that, despite what she understood from her conversation with the Commission and not having received the Commission's emails, the Claimant could have done more than make one phone call to find out about her possible entitlement.

[41] When I decided to give the Claimant permission to appeal, I did so because I thought the General Division **may** have made an error of law by applying a higher test than the law required.

[42] In my decision, I said the General Division had asked itself whether, given the Claimant's experience receiving EI benefits while working part-time, she could have done more to learn about her rights and obligations. I said this seemed to be a different test than whether, given the Claimant's circumstances of having received EI benefits while working part-time, she had acted as a reasonable and prudent person would have acted.

[43] However, at this stage of the appeal, for me to intervene in an error of law, the Claimant has to prove that the General Division **actually** made an error of law.

[44] I am not satisfied that it did. Although the General Division found there was more the Claimant could have done to understand her entitlement, it also said the Claimant had not acted as a reasonable and prudent person would have acted in similar circumstances. And it explained the Claimant's history of working part-time and filing claimant reports.¹⁵

¹⁴ See paragraph 20 of the General Division decision.

¹⁵ See paragraph 21 of the General Division decision.

[45] Since the General Division considered the Claimant's actions in the context of how a reasonable and prudent person in her situation would have acted, I find that it did not apply a higher legal test than it should have.

[46] The General Division also properly considered whether there were exceptional circumstances that excused the Claimant from taking reasonably prompt steps to confirm her rights and obligations. It concluded, however, that general confusion with the different kind of pandemic-related benefits and how they interacted with EI regular benefits was not an exceptional circumstance.¹⁶

[47] For these reasons, I find the General Division applied the legal test it was supposed to apply.

– **The General Division did not base its decision on an important error of fact**

[48] The General Division did not base its decision that the Claimant had not shown good cause for the delay on an important error of fact.

[49] The Appeal Division can intervene only in certain kinds of errors of fact. The law says I can intervene only if the General Division based its decision on an erroneous finding of fact that it made perversely, capriciously, or without regard for the material before it.¹⁷

[50] If the General Division makes a factual finding that squarely contradicts or is unsupported by the evidence, its determination may be said to have been made perversely, capriciously, or without regard to the evidence.¹⁸

[51] The Claimant questions how the General Division concluded that she could have done more to understand her rights, when it accepted that she had understood from her conversation with the Commission agent that she could not get benefits while working part-time and that she had not gotten the emails about the benefit transition.

¹⁶ See paragraph 24 of the General Division decision.

¹⁷ See section 58(1)(c) of the DESD Act.

¹⁸ See *Garvey v Canada (Attorney General)*, 2018 FCA 118.

[52] The General Division did not overlook or misinterpret misconstrue these pieces of evidence. It accepted them as facts.¹⁹

[53] Still, given the Claimant's experience receiving EI benefits while working part-time, the General Division found that she had not acted as a reasonable and prudent person would have acted to understand their right to EI benefits, since there was more she could have done beyond speaking to a single Commission agent.

[54] Although the Claimant may disagree with this conclusion, this was a conclusion the General Division was entitled to reach. The evidence before the General Division supported its conclusion.

[55] The Claimant also argues the General Division made an error in comparing her actions with her past situation while getting EI regular benefits, when this was a special case, and she was unaware of what to do. However, the General Division also considered this evidence.

[56] The General Division acknowledged that there was some confusion over how other pandemic-related benefits interacted with EI regular benefits. But it found this was not an exceptional circumstance the Claimant could rely on to excuse her from taking reasonably prompt steps to understand her entitlement to EI benefits.²⁰

[57] I have reviewed the file and listened to the audio recording of the General Division hearing. The General Division did not overlook or misinterpret misconstrue any other important evidence that might have changed the outcome.

[58] The Claimant disagrees with the General Division's conclusion. However, I cannot interfere with that conclusion if the General Division correctly applies settled law to the facts.²¹ I also cannot interfere with the General Division's weighing of the

¹⁹ See paragraph 20 of the General Division decision.

²⁰ See paragraph 24 of the General Division decision.

²¹ See *Garvey v Canada (Attorney General)*, 2018 FCA 118.

evidence, even if I might have weighed the evidence differently or come to a different conclusion.²²

[59] I recognize that this result is going to be disappointing to the Claimant. But, unfortunately, I have to dismiss her appeal. The General Division did not make an error that falls within the permitted grounds of appeal.

Conclusion

[60] The appeal is dismissed. The General Division did not make an error that will allow me to intervene in its decision.

Charlotte McQuade
Member, Appeal Division

²² See *Sherwood v Attorney General of Canada*, 2019 FCA 166.