



[TRANSLATION]

Citation: *DA v Canada Employment Insurance Commission*, 2022 SST 1116

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

**Applicant:** D. A.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated  
September 12, 2022 (GE-22-2094)

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**Tribunal member:** Pierre Lafontaine

**Decision date:** October 31, 2022

**File number:** AD-22-689

## Decision

[1] Leave (permission) to appeal is refused. This means that the appeal will not proceed.

## Overview

[2] On October 20, 2017, the Respondent (Commission) told the Applicant (Claimant) that it had reviewed his application for Employment Insurance (EI) benefits, which started on August 21, 2016. The Commission found that the Claimant voluntarily left his job without good cause. Also, it made adjustments to the claimant reports when it came to his earnings for the period from August 28, 2016, to July 30, 2017. The Commission found that the Claimant made five false statements, and imposed a penalty on top of issuing a notice of violation.

[3] On April 20, 2022, the Claimant asked the Commission to reconsider its October 20, 2017, decision.

[4] On May 20, 2022, the Commission told the Claimant that it looked at the reasons he gave for the delay in requesting it to reconsider its initial decision, but it found that these reasons did not meet the requirements of the law. So, the Commission told the Claimant that it would not reconsider the decision. The Claimant appealed to the General Division.

[5] The General Division found that the Commission had exercised its discretion judicially when it refused to extend the time to request a reconsideration.

[6] The Claimant now seeks leave from the Appeal Division to appeal the General Division decision.

[7] In support of his application for leave to appeal, he argues that the General Division relied only on the period to file a request for reconsideration to make its decision. He argues that the General Division did not consider the facts that show he had good cause to leave his job.

[8] 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.

[9] 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**

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

## **Analysis**

[11] 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.

[12] 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 at the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove his case; he must instead establish that the appeal has a reasonable chance of success. In other words, he must show that there is arguably a reviewable error based on which the appeal might succeed.

[13] 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?**

[14] The Claimant argues that the General Division relied only on the period to file a request for reconsideration to make its decision. It did not consider the facts that show that he had good cause to leave his job. He argues that the situation is discouraging and very stressful. He reached a payment agreement with the Canada Revenue Agency (CRA), but the debt is not going down.

[15] The issue before the General Division involved the Claimant's failure to file his request for reconsideration to the Commission within the set 30-day period.

[16] The General Division had to decide whether the Commission had exercised its discretion judicially when it denied the Claimant's request to extend the 30-day period for making a request for reconsideration.<sup>1</sup>

[17] The Claimant did not make his request for reconsideration until April 20, 2022—more than 365 days after the decision. The Claimant knew about the decision for over 30 days, since he entered into a payment agreement with the CRA from the beginning to repay his debt.

[18] Before the General Division, the Claimant said he was late in asking the Commission to reconsider its initial decision because he was [translation] "young and careless." He said that the person who made the initial decision discouraged him by saying there was nothing that could be done. He said that he is now in a difficult financial situation where repaying the debt is a burden on his family. He was also told in writing that he could challenge the decision. He did not believe that was possible.

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<sup>1</sup> Section 112(1)(b) of the *Employment Insurance Act*; section 1 of the *Reconsideration Request Regulations*.

[19] After reviewing the Claimant's evidence, the General Division found that the Commission had properly used its discretion. It found that the Claimant had not given a reasonable explanation for the 1,613-day delay in making his request for reconsideration. It also found that he had not shown evidence of a continuing intention to request a reconsideration, since he did not take any action to do so until April 2022.

[20] I note that the Claimant argues that he left his job because the employer refused to pay for his gas, as promised. But, the Claimant could have found another job before leaving when he did. Also, case law has established that transportation issues do not constitute just cause for voluntary leaving. So, his request for reconsideration had no reasonable chance of success.

[21] The General Division found that the Commission acted in good faith and took into account all the relevant circumstances while ignoring irrelevant ones, when it refused to grant an extension of time to request a reconsideration. It found that the Commission exercised its discretion judicially when it refused to extend the time to request a reconsideration of the initial decision.

[22] In support of his application for leave to appeal, the Claimant has not identified any error of jurisdiction or any failure by the General Division to observe a principle of natural justice. He has not identified errors in law or any erroneous findings of fact that the General Division could have made in a perverse or capricious manner or without regard for the material before it when making its decision.

[23] For the reasons I have mentioned above and after reviewing the appeal file, the General Division decision, and the Claimant's arguments in support of his application for leave to appeal, I can only conclude that the appeal has no reasonable chance of success.

## **Conclusion**

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

Pierre Lafontaine  
Member, Appeal Division