



Citation: *CA v Canada Employment Insurance Commission*, 2022 SST 1252

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: C. A.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated September 9, 2022
(GE-22-1877 and GE-22-1876)

Tribunal member: Melanie Petrunia

Decision date: November 11, 2022

File number: AD-22-704 and AD-22-705

Decision

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

Overview

[2] The Applicant, C. A. (Claimant) applied for employment insurance (EI) benefits and established a claim effective October 18, 2015. She received sickness benefits, followed by maternity and parental benefits for the period from October 18, 2015 to January 28, 2017.

[3] The Respondent, the Canada Employment Insurance Commission (Commission), reviewed her claims. It decided that the Claimant failed to report earnings from two employers that she received during her benefit period. The Commission sent the Claimant letters dated June 12, 2018 and August 17, 2018 communicating its decisions.

[4] The Claimant submitted a request for reconsideration of these decisions on March 17, 2022. The Commission refused to reconsider the decisions because the request was late and it decided that the Claimant did not have a reasonable explanation for the delay or a continuing intention to request reconsideration.

[5] The Claimant unsuccessfully appealed the Commission's decisions to the Tribunal's General Division. The General Division found that the Commission acted properly when it refused the Claimant an extension of time to file her reconsideration request. It dismissed her appeals.

[6] The Claimant now wants to appeal the General Division decision to the Tribunal's Appeal Division. However, she needs permission for her appeal to move forward. She argues that the General Division did not follow procedural fairness.

[7] 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.

Preliminary matters

[8] The General Division joined the appeals of the two Commission decisions on the basis that there was a common fact pattern arising from the appeals and that no injustice was likely to be caused to any party. The appeals were heard together, resulting in a single decision. These matters are also joined at the Appeal Division and both applications for leave to appeal are addressed in this decision.

Issues

[9] The issues are:

- a) Is there an arguable case that the General Division failed to follow procedural fairness by not adjourning the hearing?
- b) Does the Claimant raise any other reviewable error of the General Division upon which the appeal might succeed?

Analysis

[10] The legal test that the Claimant needs to meet on an application for leave to appeal is a low one: Is there any arguable ground on which the appeal might succeed?¹

[11] To decide this question, I focused on whether the General Division could have made one or more of the relevant errors (or grounds of appeal) listed in the Department of Employment and Social Development Act (DESD Act).²

[12] 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;

¹ This legal test is described in cases like *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12 and *Ingram v Canada (Attorney General)*, 2017 FC 259 at para 16.

² DESD Act, s 58(2).

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;³ or

d) made an error in law.⁴

[13] 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. I should also be aware of other possible grounds of appeal not precisely identified by the Claimant.⁵

Background

[14] The Claimant received sickness benefits, followed by maternity and parental benefits for the period from October 18, 2015 to January 28, 2017.⁶ The Commission later reviewed her claims.

[15] The Commission decided that the Claimant knowingly made false statements when she failed to declare earnings from two employers. The Commission sent the Claimant a letter on June 12, 2018 explaining that earnings were allocated to the weeks beginning January 15 and 22, 2017, resulting in an overpayment.⁷ A penalty was imposed and a minor violation was issued.

[16] The Commission sent the Claimant a letter dated August 17, 2018 explaining that it had allocated earnings to the weeks from October 25, 2015 to February 14, 2016,

³ 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.

⁴ This paraphrases the grounds of appeal.

⁵ *Karadeolian v Canada (Attorney General)*, 2016 FC 615; *Joseph v Canada (Attorney General)*, 2017 FC 391.

⁶ GD3-25 to GD3-27.

⁷ GD3-58

resulting in an overpayment.⁸ Another penalty was imposed and a very serious violation was issued.

[17] The Claimant was in contact with the Commission and with the Canada Revenue Agency during the years following the decisions. However, she did not submit a request for reconsideration until March 17, 2022, approximately three and a half years late.⁹

[18] The Commission decided that the Claimant did not provide a reasonable explanation for the delay in making the request for reconsideration. It also decided that she didn't show a continuous intention to request reconsideration throughout the period of delay. The Commission wrote to the Claimant on March 27, 2022 advising her that it would not be reconsidering its decisions.¹⁰

The General Division decision

[19] The General Division dismissed the Claimant's appeals. It found that the Commission did exercise its discretion properly when denying the Claimant an extension of time to submit her reconsideration request.

[20] The General Division considered that the Claimant was in contact with the Commission during the period of delay.¹¹ She was also in contact with CRA and entered into an agreement to repay the debt arising from the overpayments. The Claimant was told by Commission agents on more than one occasion that she should make a request for reconsideration.¹²

[21] The General Division also considered that the Claimant told the Commission she had health issues that prevented her from requesting reconsideration, but no medical or other supporting documents were provided.¹³ The General agreed with the Commission that the Claimant had not provided a reasonable explanation for the delay.

⁸ GD3-60

⁹ GD3-56

¹⁰ GD3-121

¹¹ General Division decision at para 35.

¹² General Division decision at para 40.

¹³ General Division decision at para 39.

[22] The General Division reviewed the Commission's reasons for finding that the Claimant did not show a continuing intention to request reconsideration. It considered the dates the Claimant contacted the Commission, the agreement she made with CRA to repay the debt, and the delay from April 30, 2021, when she was instructed to make a request for reconsideration, to when she submitted her request on March 17, 2022.¹⁴

[23] The General Division found that the Commission exercised its discretion properly. It found that the Commission considered all relevant factors, ignored irrelevant factors, acted in good faith and did not act in a discriminatory manner.¹⁵

There is no arguable case that the General Division did not follow procedural fairness

[24] The Claimant says that she did not have an opportunity to have a fair hearing and provide all of her documentation.

[25] In its decision, the General Division discussed the procedural history of the appeal. The hearing was first scheduled as a videoconference on July 11, 2022.¹⁶ The Claimant requested an adjournment on June 29, 2022 because there had been a tragic death in her family. The request was granted and the hearing was rescheduled to July 21, 2022.¹⁷

[26] At the hearing on July 21st, the Claimant said that there was additional medical information that she wanted to provide in support of her appeal. The General Division adjourned the hearing to August 30, 2022. The Claimant was given a deadline of August 19, 2022 to provide the supporting documents. The Claimant did not provide any further documents.¹⁸

[27] On the day of the August 30th hearing, the Claimant requested an adjournment due to illness.¹⁹ The General Division member denied the request but gave the Claimant

¹⁴ General Division decision at para 46.

¹⁵ General Division decision at para 58.

¹⁶ General Division decision at para 13.

¹⁷ General Division decision at para 14.

¹⁸ General Division decision at para 15.

¹⁹ GDJ7

until September 5, 2022 to submit and further documents or submissions.²⁰ The Claimant did not file anything further.

[28] The Claimant states that she regrets not explaining the details surrounding the death in her family and asking for a longer adjournment. She says that she realized during the July 21st hearing that there was missing documents that she needed and she was provided a new date to gather those documents.²¹

[29] The Claimant states that she requested the medical documents and explains that she could not obtain them in time because her doctor's office was closed for almost two weeks.²² She also became under the weather during this time. The Claimant requested a new hearing date on the day of the August 30th hearing because she was unwell.

[30] The Claimant states that the General Division member gave her until the following Monday to submit new documents. The Claimant argues that she was not "in any shape or form able to complete the task by Monday."²³ The Claimant's health continued to decline after the hearing.

[31] As the Claimant states in her application for leave to appeal, she did not provide detailed reasons for her first adjournment request or ask for a longer adjournment. The matter was adjourned for 10 days and the Claimant attended the hearing on July 21st. There is no arguable case that the General Division failed to follow procedural fairness by not adjourning the hearing for a longer period.

[32] I have listened to the hearing before the General Division on July 21, 2022. The Claimant stated that she was no longer taking issue with the Commission decision dated June 12, 2018 or appealing the Commission's refusal to reconsider that

²⁰ General Division decision at para 18.

²¹ AD1-1

²² AD1-1

²³ AD1-1

decision.²⁴ The Claimant had issues with her video on her computer but she told the General Division that she was fine with proceeding with the hearing using only audio.²⁵

[33] The Claimant was asked why she did not contact the Commission until June 19, 2019, approximately 10 months after receiving the August 2018 decision. She said that she was ill during the period.

[34] The Claimant told the General Division member that she had additional health records to provide that were located in her storage unit.²⁶ She referred to it as her health folder.²⁷ The General Division member adjourned the hearing to allow the Claimant to locate and provide all relevant medical records.²⁸

[35] The Claimant said that there were many documents and asked if there was a way to scan them and submit with an explanation. The General Division member told the Claimant how she could submit the documents along with her explanation of the documents.²⁹

[36] The General Division told the Claimant that she had to submit the additional documents before the next hearing. The General Division offered the date of August 24th and asked the Claimant if she was available. The Claimant asked for the hearing to be the following week because she was attending a wedding and the General Division said that it would be on August 30, 2022.

[37] The General Division confirmed with the Claimant that she would have enough time to gather the necessary documents. The Claimant advised that it should be more than enough time.³⁰ She said that her family doctor had all of the records if there was anything that she was missing. The General Division said all documents had to be

²⁴ Recording of General Division hearing on July 21, 2022 at 20:00

²⁵ Recording of General Division hearing on July 21, 2022 at 20:45

²⁶ Recording of General Division hearing on July 21, 2022 at 40:30

²⁷ Recording of General Division hearing on July 21, 2022 at 43:35

²⁸ Recording of General Division hearing on July 21, 2022 at 45:30

²⁹ Recording of General Division hearing on July 21, 2022 at 48:00

³⁰ Recording of General Division hearing on July 21, 2022 at 51:00

submitted by August 19, 2022 to give the other party an opportunity to respond. The Claimant agreed to this deadline.

[38] The Claimant did not file any further documents by the August 19, 2022 deadline. The Claimant also did not contact the Tribunal to ask for an extension to this deadline or provide an explanation.

[39] I have also listened to the General Division hearing on August 30, 2022. The Claimant was asked why she did not submit her documents by August 19th. She said that it was her error because she thought she had to submit the documents by the new hearing date and had fallen ill the week before.³¹

[40] The General Division decided to proceed by teleconference, rather than video and allow the Claimant an opportunity to provide any further documents or written arguments by the following Monday, September 5, 2022.³² The Claimant did not request a longer amount of time.

[41] When the General Division member asked the Claimant if she understood that the adjournment request was denied but she had a few more days to submit documents and arguments by email, the Claimant replied, "Yeah, no problem."³³

[42] The Claimant did not provide any further documents or written arguments before the September 5, 2022 deadline. In her application for leave to appeal, the Claimant argues that she was unable to meet that deadline, however, there was no communication with the Tribunal and she did not request an extension of time to submit the documents. The General Division proceeded to issue its decision on September 9, 2022.

[43] The Claimant states in her application for leave to appeal, that she was unable to obtain the documents by the August 19th deadline because her doctor's office was closed for almost two weeks. She said that she did submit a request for the documents.

³¹ Recording of General Division hearing on August 30, 2022 at 9:28

³² Recording of General Division hearing on August 30, 2022 at 11:28

³³ Recording of General Division hearing on August 30, 2022 at 13:45

She did not provide this information when asked by the General Division why she didn't meet the deadline. The Claimant was also then provided with another date by which to provide the documents, September 5, 2022, but nothing was submitted.

[44] There is no arguable case that the General Division failed to provide a fair process. The Claimant's matter was adjourned twice and she was given additional opportunities to provide documents and written arguments. The Claimant had an opportunity to present her case.

[45] Aside from the Claimant's arguments, I have also considered other grounds of appeal. The Claimant has not pointed to any important errors of fact, and I have not identified any based on the record. There is no arguable case that the General Division made an error of jurisdiction. I have not identified any errors of law.

[46] 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.

Conclusion

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

Melanie Petrunia
Member, Appeal Division