



Citation: *TA v Canada Employment Insurance Commission*, 2022 SST 1344

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: T. A.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated September 29, 2022
(GE-22-2404)

Tribunal member: Jude Samson

Decision date: November 25, 2022

File number: AD-22-760

Decision

[1] T. A. is the Claimant in this case. I'm refusing his request for leave (permission) to appeal. The appeal will not proceed.

Overview

[2] The Claimant applied for Employment Insurance (EI) regular benefits in January 2022. However, he later asked the Canada Employment Insurance Commission (Commission) to backdate his application and treat it as though it had been received in October 2021.¹

[3] The Commission refused. It concluded that the Claimant hadn't shown good cause for submitting his application late.

[4] The Claimant appealed the Commission's decision to the Tribunal's General Division. But it dismissed his appeal. The Claimant now wants to appeal the General Division decision to the Tribunal's Appeal Division, but he needs permission for his file to move forward.

[5] I sympathize with the Claimant's circumstances. However, I've found that his appeal has no reasonable chance of success. I have no choice, then, but to refuse permission to appeal.

Issue

[6] Could the General Division have made a relevant error when it concluded that the Claimant didn't have good cause for filing his application late?

Analysis

[7] Most Appeal Division files follow a two-step process. This appeal is at step one: permission to appeal.

¹ Backdating an application for EI benefits is sometimes called an "antedate."

[8] The legal test the Claimant needs to meet at this step is low: Is there any arguable ground on which the appeal might succeed?² If the appeal has no reasonable chance of success, then I must refuse permission to appeal.³

[9] To decide this question, I considered whether the General Division could have made one of the errors listed in the law.⁴

The Claimant's appeal has no reasonable chance of success

[10] The General Division had to decide whether the Claimant could backdate his application for EI benefits from January 28, 2022, to October 3, 2022. To do so, the Claimant had to show that he had good cause for filing his application late. Plus, the Claimant's explanation had to be valid throughout the entire period of the delay.⁵

[11] Proving good cause can be difficult.⁶ People have to show that they did what a reasonable person in their situation would have done to satisfy themselves of their rights and obligations under the law.⁷ This includes an obligation to take reasonably prompt steps to determine if they qualified for benefits.

[12] The Claimant argues that he provided the General Division with good reasons for his delay: he was looking for work, applying for jobs, doing interviews, and working.

[13] The General Division clearly recognized the reasons the Claimant gave to explain his delay. Ultimately, however, it concluded that the Claimant's reasons didn't meet the strict legal test for establishing good cause.

² This legal test is described in cases like *Osaj v Canada (Attorney General)*, 2016 FC 115 at paragraph 12 and *Ingram v Canada (Attorney General)*, 2017 FC 259 at paragraph 16.

³ This is the legal test described in section 58(2) of the *Department of Employment and Social Development Act* (DESD Act).

⁴ The relevant errors, formally known as "grounds of appeal," are listed under section 58(1) of the DESD Act.

⁵ The legal test is described in more detail in cases like *Canada (Attorney General) v Mendoza*, 2021 FCA 36 and *Quadir v Canada (Attorney General)*, 2018 FCA 21.

⁶ The courts have described the legal test as imposing a duty that is both demanding and strict: see, for example, *Canada (Attorney General) v Kaler*, 2011 FCA 266 at paragraph 4.

⁷ The Federal Court of Appeal recently summarized the test for "good cause" in *Canada (Attorney General) v Mendoza*, 2021 FCA 36 at paragraphs 13–14.

[14] In his application to the Appeal Division, the Claimant doesn't seem to be alleging that the General Division based its decision on an important mistake about the facts of his case. Nor does he say that the General Division misunderstood the relevant legal test.

[15] Instead, the Claimant simply disagrees with the General Division's conclusion. He seems to be hoping that I'll take a fresh look at his case and decide in his favour. However, that's not something that I can do. The Appeal Division's limited role doesn't allow me to intervene just to reweigh the evidence or to settle a disagreement about the application of settled legal principles to the facts of a case.⁸

[16] As a result, I've concluded that the Claimant's appeal has no reasonable chance of success.

[17] Aside from the Claimant's arguments, I also reviewed the file and examined the General Division decision.⁹ The General Division summarized the law and used evidence to support its decision. I did not find evidence that the General Division might have ignored or misinterpreted.

Conclusion

[18] I've concluded that the Claimant's appeal has no reasonable chance of success. I have no choice, then, but to refuse permission to appeal. This means that the appeal will not proceed.

Jude Samson
Member, Appeal Division

⁸ See paragraphs 7 to 11 of the Federal Court of Appeal's decision in *Garvey v Canada (Attorney General)*, 2018 FCA 118.

⁹ The Federal Court has said that I must do this in decisions like *Griffin v Canada (Attorney General)*, 2016 FC 874 and *Karadeolian v Canada (Attorney General)*, 2016 FC 615.