



Citation: *KA v Canada Employment Insurance Commission*, 2023 SST 11

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: K. A.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated December 7, 2022
(GE-22-2793)

Tribunal member: Pierre Lafontaine

Decision date: January 5, 2023

File number: AD-22-934

Decision

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

Overview

[2] The Applicant (Claimant) applied for Employment Insurance (EI) benefits on May 31, 2022. He asked that his application start earlier, that is March 27, 2022.

[3] The Respondent (Commission) determined that the Claimant did not have good cause because a reasonable person in his situation would have tried to find out if he was entitled to benefits. The Commission says he should have asked what he had to do and when. The Claimant appealed the refusal to the General Division.

[4] The General Division found that a reasonable and prudent person in the Claimant's circumstances would have made inquiries with the Commission about his rights and obligations while he was looking for a job. It found that the Claimant did not present any exceptional circumstances preventing him from applying for the entire period of delay. The General Division concluded that the Claimant did not prove good cause because he did not act a reasonable and prudent person in similar circumstances for the entire delay period.

[5] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. He submits that he did not know he had to apply right away. He was actively looking for a job. If he had known, he would have applied right away. The Claimant puts forward that he needs help to pay his bills.

[6] I must decide whether the Claimant raised some reviewable error of the General Division upon which the appeal might succeed.

[7] I refuse leave to appeal because the Claimant's appeal has no reasonable chance of success.

Issue

[8] Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

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 that:

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 must be met on the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove his case but must establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, that there is arguably some reviewable error upon which the appeal might succeed.

[11] Therefore, before I can grant leave, I need to be satisfied that the reasons for appeal fall within any of the above-mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success.

Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

[12] The Claimant submits that he did not know he had to apply right away. He was actively looking for a job. If he had known, he would have applied right away. The Claimant puts forward that he needs help to pay his bills.

[13] To establish good cause, a claimant must be able to show that they did what a reasonable person in their situation would have done to satisfy themselves as to their rights and obligations under the law.¹

[14] The General Division found that a reasonable and prudent person in the Claimant's circumstances would have made inquiries with the Commission about his rights and obligations while he was looking for a job. It found that the Claimant did not present any exceptional circumstances preventing him from applying for the entire period of delay. The General Division concluded that the Claimant did not prove good cause because he did not act a reasonable and prudent person in similar circumstances for the entire delay period.

[15] It is well established that a claimant has an obligation to make prompt inquiries with the Commission to verify eligibility.² It is also established that ignorance of the process, even coupled with good faith, does not constitute good cause under the law.³

[16] The undisputed evidence before the General Division shows no effort on the Claimant's part to determine his entitlement or to verify his obligations under the law from March 27, 2022, to May 31, 2022.

¹ Section 10(4) of the *Employment Insurance Act* (EI 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 Persiantsev*, 2010 FCA 101.

[17] The General Division correctly determined that a delay in applying based on the Claimant's efforts to find work does not constitute good cause under the law. Unfortunately, for the Claimant, waiting to find work rather than immediately applying for benefits, while laudable, does not provide good cause for delay as required by law.⁴

[18] As stated by the General Division, the Claimant had no exceptional circumstances to explain why he did not take reasonably prompt steps to make these enquiries. At the time, he was able to attend job interviews. That would likely require more effort than verifying his obligations with the Commission.

[19] After reviewing the appeal file and the General Division's decision as well as considering the Claimant's arguments in support of his request for leave to appeal, I have no choice but to find that the appeal has no reasonable chance of success. The Claimant has not set out a reason, which falls into the above-enumerated grounds of appeal that could possibly lead to the reversal of the disputed decision.

Conclusion

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

Pierre Lafontaine
Member, Appeal Division

⁴ *Howard v Canada (Attorney General)*, 2011 FCA 116; *Shebib v Canada (Attorney General)*, 2003 FCA 88.