[TRANSLATION]

Citation: *JF v Canada Employment Insurance Commission*, 2023 SST 724

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	J. F.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated February 24, 2023 (GE-22-3179)

Tribunal member:	Pierre Lafontaine
Decision date:	June 6, 2023
File number:	AD-23-310

Decision

[1] Permission to appeal is refused. The appeal will not proceed.

Overview

[2] From August 28, 2020, to June 17, 2021, the Applicant (Claimant) worked as a student monitor. She stopped working for that employer because of a shortage of work or an end of contract or season.

[3] From November 10, 2021, to December 21, 2021, she worked as a school sedan driver for another employer. She stopped working for that employer because of a shortage of work or an end of contract or season.

[4] On December 26, 2021, she made an application (initial claim) for Employment Insurance (EI) benefits. On April 11, 2022, she asked the Respondent, the Canada Employment Insurance Commission (Commission), to antedate her December 26, 2021, application. She wanted it to start on June 20, 2021.[1]

[5] On June 21, 2022, the Commission told her that her claim for EI benefits could not start on June 20, 2021, because she had not proven that between June 20, 2021, and January 1, 2022, she had good cause to apply late for benefits. After reconsideration, the Commission upheld its initial decision. The Claimant appealed to the General Division.

[6] The General Division found that the employer's failure to issue her a Record of Employment (ROE) was not good cause for the delay in applying for benefits. It found that a reasonable and prudent person would have taken the necessary steps to get information from the Commission and to apply for benefits without delay after their student monitor job ended. The General Division decided that the Claimant had not shown good cause for the delay in applying for EI for the entire period of the delay.

[1] See GD3-12.

[7] The Claimant now seeks permission from the Appeal Division to appeal the General Division decision. She argues that the General Division ignored the applicable case law. She argues that the General Division did not take into account that her employer misled and misinformed her. She says that the General Division interpreted the concept of good cause too narrowly.

[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 permission 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 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 permission 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 permission to appeal stage, the Claimant does not have to prove her case; she must instead establish that the appeal has a reasonable chance of success. In other words, she must show that there is arguably a reviewable error based on which the appeal might succeed.

[13] I will give permission 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 ignored the applicable case law. She argues that the General Division did not take into account that her employer misled and misinformed her. She says that the General Division interpreted the concept of good cause too narrowly.

[15] The evidence before the General Division shows that the employer did not issue a ROE to the Claimant because it believed that she did not have enough hours to get EI. Without a ROE or separation letter, the Claimant did not know that she could apply for EI. She took no steps between the day her job ended—June 17, 2021—and the week of December 13, 2021, because she did not know that she was entitled to EI. She did not contact Service Canada.[2]

[16] As the General Division noted, the Federal Court of Appeal tells us that good faith and ignorance of the law are not, in themselves, good cause for delaying an application for benefits.[3]

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[2] See GD2, GD3-12, GD3-16 to GD3-18, GD3-19, and GD12-1.
[3] *Albrecht*, A-172-85; *Larouche*, A-644-93; *Carry*, 2005 FCA 367; *Somwaru*, 2010 FCA 336; *Kaler*, 2011 FCA 266; *Mauchel*, 2012 FCA 202.

[17] Unfortunately for the Claimant, the Federal Court of Appeal has also repeatedly held that a claimant who delays applying for benefits because their employer failed to issue a ROE or issued one late does not have good cause for the delay.[4]

[18] As the General Division decided, a reasonable and prudent person in the Claimant's situation would have taken "reasonably prompt" steps as necessary to get information from the Commission and to apply for benefits without delay after they stopped working as a student monitor.

[19] The Claimant would like the Appeal Division to interpret the case law less narrowly than the General Division did. However, it is not open to the Appeal Division, in light of the limitation on its jurisdiction and in the absence of the existence of an error of law, breach of natural justice, or capricious findings of fact, to reach a different result on the same facts as found by the General Division.[5]

[20] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for permission to appeal, I have no choice but to find that the appeal has no reasonable chance of success.

Conclusion

[21] Permission to appeal is refused. The appeal will not proceed.

Pierre Lafontaine
Member, Appeal Division

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[4] *Canada (Attorney General) v Chan*, A-185-94; *Canada (Attorney General) v Brace*, 2008 FCA 118; *Canada (Attorney General) v Ouimet*, 2010 FCA 83.
[5] *Quadir v Canada (Attorney General)*, 2018 FCA 21.