Citation: *NP v Canada Employment Insurance Commission*, 2023 SST 638

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	N. P.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated February 17, 2023 (GE-22-3456)

Tribunal member:	Janet Lew
Decision date:	May 29, 2023
File number:	AD-23-283

Decision

[1] Leave (permission) to appeal is refused. The appeal will not be going ahead.

Overview

[2] The Applicant, N. P. (Claimant), is appealing the General Division decision. The General Division dismissed the Claimant's appeal. It found that the Claimant was late when she applied for Employment Insurance benefits. It also found that she did not show good cause for the delay in filing for benefits. As a result, her claim could not be started at the earlier date. This meant she could not get benefits.

[3] The Social Security Tribunal (Tribunal) wrote to the Claimant and asked the Claimant to explain why she was appealing the General Division decision. The Tribunal asked her to identify any errors that the General Division might have made. The Claimant did not identify any particular errors. She did not, for instance, say that the General Division made any legal or factual errors.

[4] The Claimant argues that she is entitled to Employment Insurance benefits. She notes that she relied on advice from Employment Insurance agents. She says that this advice contributed to her delay. She says that the Respondent, Canada Employment Insurance Commission (Commission), failed to adequately support her.

[5] Before the Claimant can move ahead with her appeal, I have to decide whether the appeal has a reasonable chance of success. In other words, there has to be an arguable case.[1] If the appeal does not have a reasonable chance of success, this ends the matter.[2]

[6] I am not satisfied that the appeal has a reasonable chance of success. Therefore, I am not giving permission to the Claimant to move ahead with her appeal.

---

[1] *Fancy v Canada (Attorney General)*, 2010 FCA 63.
[2] Under section 58(2) of the *Department of Employment and Social Development* (DESD) *Act,* I am required to refuse permission if I am satisfied "that the appeal has no reasonable chance of success."

Issue

[7] Is there an arguable case that the General Division made any jurisdictional, procedural, legal, or factual mistakes?

I am not giving the Claimant permission to appeal

[8] The Appeal Division must grant permission to appeal unless the appeal has no reasonable chance of success. A reasonable chance of success exists if the General Division possibly made a jurisdictional, procedural, legal, or certain type of factual error.[3]

[9] For factual errors, the General Division had to have based its decision on an error that it made in a perverse or capricious manner, or without regard for the evidence before it.

Is there an arguable case that the General Division made any jurisdictional, procedural, legal, or factual mistakes?

[10] The Claimant has not identified any errors that the General Division might have made.

[11] However, the Claimant argues that the Commission failed to give her adequate support and that it misled her. Because of the misleading advice, the Claimant did not apply for benefits on time. She believed that she had to obtain a record of employment from her employer before she could apply. She did not realize that she should have filed an application for benefits without waiting for a record of employment

[12] Based on the advice that she received from the Commission, the Claimant argues that she did have good cause for the delay in applying for benefits.

[13] Essentially, the Claimant is asking me to reassess her appeal and to come to a different conclusion from the General Division. But appeals at the Appeal Division are limited. The Appeal Division cannot intervene in General Division decisions unless it

[3] See section 58(1) of the DESD Act.

made an error of the type listed under section 58(1) of the *Department of Employment and Social Development Act*. A reassessment does not represent one of these types of errors.

[14] I have reviewed the underlying record to ensure that the General Division did not make one of these types of errors.

[15] Insofar as I can determine, the General Division did not make any jurisdictional errors. It addressed the issues that were before it. It did not exceed its powers and decide something that it did not have the power to address.

[16] The General Division also does not appear to have made any procedural errors. The General Division provided the Claimant with a copy of all of the documents on file. It also gave the Claimant adequate notice of the hearing. And more importantly, the General Division gave the Claimant a fair chance to present her case.

[17] There is no suggestion that the General Division overlooked or misapprehended any of the important or relevant facts. The General Division acknowledged that the Claimant had called the Commission in October 2021, and that the agent advised her that she would require a record of employment for her Employment Insurance claim.

[18] As far as any possible legal errors, the General Division correctly cited section 10(4) of the *Employment Insurance Act*. The section sets out the requirements that an applicant has to meet to be able to backdate a late claim.

[19] The General Division also referred to relevant case law. The General Division noted that certain principles have emerged from the case law. To show good cause, an applicant must:

- prove that they acted as a reasonable and prudent person would have acted in similar circumstances,
- show that they took reasonably prompt steps to understand their entitlement to benefits and obligations under the law, and

- if they did not take these steps, show that there were exceptional circumstances to explain why they did not take these steps.

[20] The General Division also noted that an applicant had to show good cause for the entire period of the delay.[4]

[21] The General Division correctly stated the law. It then proceeded to apply the law to the facts in the Claimant's case.

[22] The General Division was prepared to accept that the Claimant had received inadequate advice and support from the Commission in October 2021. The General Division accepted that it was reasonable for the Claimant to rely on this advice. Hence, the General Division accepted that the Claimant had shown good cause for the delay up to at least October 2021, when she contacted the Commission.

[23] However, the Claimant had to show that she continued to have good cause after October 2021, to the time she applied for benefits. The General Division found that eight months was a long period of time during which the Claimant did not follow up with the Commission. The General Division found that, at some point after October 2021, a reasonable person would have contacted the Commission again for more information on how to address her situation. The General Division found that the Claimant had not acted as a reasonable person would have acted.

[24] Clearly, the General Division considered the length of time involved, from the time when the Claimant phoned the Commission, to the time when she applied for benefits. The General Division also considered the fact that the Claimant had discussed her claim with her friends. The General Division was entitled to consider these factors when assessing whether the Claimant had good cause throughout the entire period of the delay.

---

[4] Section 10(4) of the *Employment Insurance Act.*

[25] The Federal Court of Appeal has determined that "Whether a particular applicant had good cause to delay the filing of his claim within the meaning of subsection 10(4) of the [*Employment Insurance*] Act is a question of mixed fact and law [citation omitted]."[5]

[26] Or, as expressed in a case called *Quadir*, "The application of settled principles to the facts is a question of mixed fact and law, and is not an error of law."[6]

[27] The Federal Court of Appeal has held that errors or questions of mixed fact and law do not give the Appeal Division any power or jurisdiction to interfere with the General Division decision, even if it were to come to a different conclusion on the same facts.[7] So, even if I were to find that it was reasonable for the Claimant to have continued relying on what she understood was the Commission's advice, I am powerless to intervene in the General Division decision.

[28] Finally, I recognize that the Claimant has paid Employment Insurance premiums for close to 25 years and that had she been aware that she could have applied for Employment Insurance benefits without a record of claim, that she would have done so promptly. I also recognize that she diligently pursued her employer for a record of employment. However, these are not relevant considerations under section 10(4) of the *Employment Insurance Act* and do not give me a basis to interfere with the General Division decision.

Conclusion

[29] The appeal does not have a reasonable chance of success. Permission to appeal is refused. This means that the appeal will not proceed.

Janet Lew
Member, Appeal Division

---

[5] *Rodger v Canada (Attorney General)*, 2013 FCA 222.
[6] *Quadir v Canada (Attorney General)*, 2018 FCA 21.
[7] *Quadir v Canada (Attorney General)*, 2018 FCA 21.