



Citation: *PD v Canada Employment Insurance Commission*, 2023 SST 594

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

**Applicant:** P. D.  
**Representative:** T. D.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated March 15, 2023  
(GE-23-76)

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**Tribunal member:** Janet Lew

**Decision date:** May 16, 2023  
**File number:** AD-23-277

## Decision

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

## Overview

[2] The Applicant, P. D. (Claimant), is appealing the General Division decision. The General Division dismissed the Claimant's appeal. It found that he had not filed his appeal on time. The Claimant argues that the General Division made an important mistake about the facts.

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

[4] 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 his appeal.

## Issue

[5] Is there an arguable case that the General Division made an important mistake about the facts?

## I am not giving the Claimant permission to appeal

[6] The Appeal Division must grant permission to appeal unless the appeal has no reasonable chance of success. A reasonable chance of success exists if there is a possible jurisdictional, procedural, legal, or certain type of factual error.<sup>3</sup>

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<sup>1</sup> Under section 58(2) of the *Department of Employment and Social Development (DESD) Act*, I have to refuse permission if I am satisfied that "the appeal has no reasonable chance of success."

<sup>2</sup> See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

<sup>3</sup> Section 58(1) of the DESD Act.

[7] 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 factual errors?**

[8] The Claimant argues the General Division made an important mistake about the facts.

#### **- The General Division decision**

[9] The General Division decided that, under section 52(2) of the *Department of Employment and Social Development Act*, an appeal has to be filed within one year that an appellant gets the reconsideration decision from the Respondent, the Canada Employment Insurance Commission (Commission).

[10] Based on the facts before it, the General Division concluded that the Claimant had filed his appeal more than one year after he got the Commission's reconsideration decision. He was too late in filing his appeal. So, the General Division had to dismiss his appeal. It could not consider any other issues.

#### **- The Claimant's arguments**

[11] The General Division decision was about whether the Claimant filed his Notice of Appeal on time. The Claimant's representative did not directly address this issue.

[12] The Claimant does not challenge the General Division's conclusion that he did not file his appeal at the General Division on time. He does not disagree with the General Division's findings that he received the Commission's reconsideration decision in May 2017, and that he filed an appeal of that decision in January 2023—more than five years later.

[13] But it seems that the Claimant is arguing or suggesting two points, that:

- i. the General Division overlooked why the Claimant might have been late and did not file his appeal at the General Division on time. The Claimant is illiterate and has to rely on others to look after things for him. He may not have been able to file his appeal with the General Division because he is not able to look after things on his own, and
- ii. the General Division overlooked how the Claimant ended up with such a big debt in the first place. He suggests that if the General Division had looked at this issue, it would have decided the Claimant should not have to pay the debt because he did not create the problem or mistake.

[14] The Claimant's representative states that the Claimant has mental and physical disabilities. The Claimant had to stop working because of his disabilities. His employer issued a record of employment that mistakenly said the Claimant had been fired. The employer then issued a second record of employment. This one said the Claimant had been laid off from work.

[15] The Claimant's representative says the record of employment should have said the Claimant could not work because of his medical condition. The Claimant says that because of his employer's mistakes when it filled out the record of employment, he got Employment Insurance regular benefits when he should have gotten sickness benefits.

[16] The Commission paid the Claimant the maximum of 15 weeks of sickness benefits. Even so, the Claimant ended up with a debt of over \$16,000, made up of regular benefits that should not have been paid at all.

[17] The Claimant's representative says that the employer and the Commission are to blame for the debt. He says that they misled the Claimant and put him in this position.

**- The Claimant had an excuse for being late**

[18] The General Division did not consider this issue. It did not examine why the Claimant might have been late when he filed his appeal to the General Division. This is

because the law says that the only relevant factor is whether an appeal is filed within one year after a decision is communicated to an appellant.<sup>4</sup> In other words, it did not matter why the Claimant was late. What mattered was that he was late when he filed his application. So, the General Division had to dismiss the appeal once it found that the Claimant was late.

**- The Claimant says he is not responsible for creating the debt**

[19] The General Division did not look at this issue. It did not consider how the Claimant's debt came about and what could be done about it. That is because once the General Division decided that the Claimant had not filed his notice of appeal to the General Division on time, it had to dismiss the appeal. It could not decide anything else.

**- The appeal does not have a reasonable chance of success**

[20] The appeal does not have a reasonable chance of success. The General Division's findings are consistent with the evidence that was before it. The General Division correctly interpreted section 52(2) of the DESD Act and properly applied the law to the facts when it dismissed the Claimant's appeal.

[21] The General Division did not have any discretion or power to give more time to the Claimant to file his appeal.<sup>5</sup>

**What options does the Claimant have?**

[22] The Claimant has repaid \$6,000, with help from his late father. But his representative says that the debt has created financial hardship. The Claimant is on Assured Income for the Severely Handicapped (AISH) and on disability. The situation is also creating additional stress for the Claimant.

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<sup>4</sup> Section 52(2) of the DESD Act.

<sup>5</sup> See *Pellettieri v Canada (Attorney General)*, 2019 FC 1585 at paras 7 to 8 and *Smith v Canada (Attorney General)*, 2020 FC 1192.

- [23] I do not know if the Claimant has already looked at his options. If not, he can:
- i. Call Canada Revenue Agency at 1-866-864-5823 and ask about debt relief or repayment arrangements, and
  - ii. Apply for Canada Pension Plan disability benefits – the Commission suggested this.<sup>6</sup> The Claimant's representative says the Claimant is receiving disability benefits, but I do not know if he is referring to just AISH. Unless the Claimant is already getting disability benefits under the Canada Pension Plan, he can apply. He would have to show that he has a severe and prolonged disability.

## **Conclusion**

[24] I am not satisfied that the appeal has a reasonable chance of success. The Claimant did not dispute the General Division's finding that he had filed his appeal to the General Division more than five years after the reconsideration decision was communicated to him.

[25] There is no legal or factual basis to intervene in the General Division's decision. Under section 52(2) of the DESD Act, the General Division had little option but to dismiss the appeal, given the evidence before it.

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

Janet Lew  
Member, Appeal Division

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<sup>6</sup> See Representations of the Commission to the Social Security Tribunal-Employment Insurance Section, at GD 4-2.