



Citation: *NG v Canada Employment Insurance Commission*, 2023 SST 784

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant: N. G.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated February 23, 2023
(GE-22-3208)

Tribunal member: Pierre Lafontaine

Decision date: June 15, 2023

File number: AD-23-300

Decision

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

Overview

[2] The Applicant (Claimant) applied for Employment Insurance Emergency Response Benefits (ERB) in March 2020. On June 29, 2020, through a telephone call, the Claimant completed claims for the weeks from March 29 to June 20, 2020. She didn't make any more claims for benefits. On June 21, 2021, the Claimant applied for EI regular benefits. The Canada Employment Insurance Commission (Commission) backdated her claim to April 11, 2021. The Claimant wanted her application treated as though it was made even earlier, on June 21, 2020. The Commission refused her request. The Claimant appealed the refusal to the General Division.

[3] The General Division found that a reasonable and prudent person in the Claimant's circumstances would have promptly followed the directions received from the Service Canada officer who told her to find out about her claim online. It found that the Claimant did not present any exceptional circumstances to explain why she did not follow the instructions of the officer. The General Division concluded that the Claimant did not prove good cause because she did not act as a reasonable and prudent person would have done in similar circumstances.

[4] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. She submits that she disagrees with the General Division decision on the issue of her availability during the time she was attending university.

[5] A letter was sent to the Claimant explaining to her that she might have confused her appeal files and requesting that she file her grounds of appeal regarding the antedate issue decided by the General Division. The Claimant did not answer in the allowed time.

[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 her 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] Before the General Division, the Claimant argued that she did not know that she was entitled to more benefits. She thought that she was disentitled from receiving benefits because she was looking for work.

[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 promptly followed the directions received from the Service Canada officer who told her to find out about her claim online. It found that the Claimant did not present any exceptional circumstances to explain why she did not follow the directions of the officer. The General Division concluded that the Claimant did not prove good cause because she did not act as a reasonable and prudent person would have done in her situation.

[15] The Federal Court of Appeal has established that ignorance of the process, even coupled with good faith, does not constitute good cause under the law.²

[16] The undisputed evidence before the General Division shows that the Claimant delayed from July 2020, until at least October 2020, to follow the instructions given to her by the Service Canada officer.

[17] As stated by the General Division, the Claimant had no exceptional circumstances to explain why she did not follow through with the directions of the Service Canada officer from July 2020 until at least October 2020, when ERB benefits ended.

¹ Section 10(4) of the *Employment Insurance Act* (EI Act).

² *Attorney General of Canada v Kaler*, 2011 FCA 266, *Canada (Attorney General) v Persiiantsev*, 2010 FCA 101.

[18] After reviewing the appeal file and the General Division's decision as well as considering the Claimant's arguments in support of her 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

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

Pierre Lafontaine
Member, Appeal Division