



[TRANSLATION]

Citation: *MM v Canada Employment Insurance Commission*, 2023 SST 969

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

# **Leave to Appeal Decision**

**Applicant:** M. M.  
**Representative:** Philippe Thériault

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated May 8, 2023  
(GE-23-259)

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**Tribunal member:** Pierre Lafontaine

**Decision date:** July 25, 2023  
**File number:** AD-23-531

## Decision

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

## Overview

[2] The Applicant (Claimant) applied for Employment Insurance (EI) benefits on June 21, 2022. He asked that his application be treated as though it was made earlier, on September 9, 2017. He said that he was misinformed by an agent in September 2017 when he went to Service Canada after he lost his job. The agent allegedly told him that he needed to have worked 52 weeks to be entitled to benefits.

[3] The Respondent (Commission) determined that the Claimant did not have good cause for the delay because he waited four years and nine months to apply. It refused the request. On reconsideration, the Commission upheld its initial decision. The Claimant appealed to the General Division.

[4] The General Division found that the Claimant did not ask the agent for more information even though he had not worked 52 weeks with his former employer and had received benefits. The General Division found that the Claimant waited nearly five years to get more information after going to Service Canada. It found that the Claimant had not shown good cause for the delay in applying for EI.

[5] The Claimant is now asking the Tribunal for permission to appeal the General Division's decision. He says that the fact that it took him nearly five years to make an antedated claim should not prevent him from getting benefits. The Claimant says that the Commission misinformed him from the start in September 2017. So, he had good cause for the entire period of the delay.

[6] I must decide whether there is an arguable case that the General Division made a reviewable error that has a reasonable chance of success on appeal.

[7] 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

[8] Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

## 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 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.

[10] 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 his case; he must instead establish that his appeal has a reasonable chance of success. In other words, he must show that there is arguably a reviewable error based on which the appeal might succeed.

[11] 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?**

[12] The Claimant says that the fact that it took him nearly five years to make an antedated claim should not prevent him from getting benefits. The Claimant says that the Commission misinformed him from the start in September 2017. The agent told him

that he needed to have worked 52 weeks to be entitled to benefits. So, he had good cause for the entire period of the delay.

[13] The General Division found that the Claimant did not ask the agent for more information in September 2017, even though he had not worked 52 weeks with his former employer and had received benefits. It found that the Claimant waited nearly five years to get more information after going to Service Canada. The General Division found that the Claimant had not shown good cause for the entire period of the delay in applying for EI.

[14] As the General Division pointed out, the Federal Court of Appeal tells us that good faith and ignorance of the law are not in themselves good cause for the delay in applying for benefits.<sup>1</sup>

[15] The General Division found that a reasonable and prudent person in the Claimant's situation would have asked for more information after getting the information he did from the Service Canada receptionist, since he had already been told he was not entitled to benefits without having worked 52 weeks.

[16] The Claimant would like the Appeal Division to apply another decision from the General Division.<sup>2</sup> But the facts are different. In that case, the claimant had received incorrect information specific to his personal situation as a pensioner. In this case, the evidence shows that the Claimant received information without consulting his personal file. The evidence also shows that the Claimant had already received benefits without having worked 52 weeks.

[17] I have to repeat that the Appeal Division is not able to make a different finding than the General Division on the same facts given the extent of its jurisdiction and in the absence of an error of law or arbitrary findings of fact.<sup>3</sup>

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<sup>1</sup> *Albrecht*, A-172-85; *Larouche*, A-644-93; *Carry*, 2005 FCA 367; *Somwaru*, 2010 FCA 336; *Kaler*, 2011 FCA 266; *Mauchel*, 2012 FCA 202

<sup>2</sup> *AM v Canada Employment Insurance Commission*, 2014 SSTGDEI 126

<sup>3</sup> *Quadir v Canada (Attorney General)*, 2018 FCA 21

[18] 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**

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

Pierre Lafontaine  
Member, Appeal Division