



[TRANSLATION]

Citation: *IC v Canada Employment Insurance Commission*, 2023 SST 1017

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: I. C.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated
May 2, 2023 (GE-23-440)

Tribunal member: Pierre Lafontaine

Decision date: July 31, 2023

File number: AD-23-579

Decision

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

Overview

[2] The Applicant (Claimant) applied for Employment Insurance (EI) benefits on July 8, 2022. She asked that the application be treated as though it was made earlier, on April 17, 2022. The Respondent (Commission) refused her request. The Commission upheld its initial decision on reconsideration. The Claimant appealed to the General Division.

[3] The General Division found that the Claimant should have followed her union's advice and applied for EI as early as April. It found that the Claimant had to wait in line to apply for benefits. The General Division found that the Claimant's choice to go back to school in August 2022 was not good cause for delaying her EI application in April. The General Division found that the Claimant had not shown good cause for the entire period of the delay in applying for EI.

[4] 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.

[5] 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

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

Analysis

[7] 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 in its decision.

[8] 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 on 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 her 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.

[9] 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?

[10] The Claimant says that her employer unfairly dismissed her. She says that she waited to file her application for fear of getting two benefits and having to repay one of them. The Claimant says that she went to Service Canada several times in April but that it was very cold and there was a long line.

[11] Good faith and ignorance of the law are not in themselves good cause for the delay in applying for benefits.¹

[12] The General Division found that a reasonable and prudent person in the Claimant's situation would have followed her union's advice and applied for benefits as early as April. It found that the fact that it was cold did not change the Claimant's obligation to act promptly to get benefits. This is especially true given that the Claimant admitted that she had no computer literacy to file her application online. The General Division found that the training was supposed to start on August 21, 2022, and that this did not explain the delay in applying for benefits between April and July 2022. It found that the Claimant has not proven that she had good cause for the delay in applying for benefits throughout the entire period of the delay.

[13] I see no reviewable error by the General Division on which the appeal might succeed.

[14] I must repeat that the Appeal Division is not permitted to make a different finding than the General Division on the same facts, given the extent of its jurisdiction and the absence of an error of law, a breach of natural justice, or capricious findings of fact.²

[15] After reviewing the appeal file, the General Division decision, and the Claimant's arguments in support of her request for permission to appeal, I find that the appeal has no reasonable chance of success. The Claimant has not raised any issue that could justify setting aside the decision under review.

Conclusion

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

Pierre Lafontaine
Member, Appeal Division

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

² *Quadir v Canada (Attorney General)*, 2018 FCA 21.