



Citation: *RG v Canada Employment Insurance Commission*, 2023 SST 907

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

# **Leave to Appeal Decision**

**Applicant:** R. G.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated April 13, 2023  
(GE-22-3443)

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**Tribunal member:** Melanie Petrunia

**Decision date:** July 12, 2023

**File number:** AD-23-369

## Decision

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

## Overview

[2] The Applicant, R. G. (Claimant), applied for employment insurance (EI) benefits. His benefit period started on April 11, 2021. He did not make any claims for benefits by submitting bi-weekly reports until around November 30, 2021.

[3] The Claimant asked the Respondent, the Canada Employment Insurance Commission (Commission) to treat his claims for benefits as though they were made earlier, which is called antedating. The Commission antedated the claims to November 21, 2021, but refused the Claimant's request to treat the claims as though they were made starting April 11, 2021.

[4] The Claimant appealed this decision to the Tribunal's General Division. The General Division dismissed the appeal. It found that the Claimant did not show good cause for the entire period of delay in claiming benefits and his claims could not be antedated.

[5] The Claimant is now asking to appeal the General Division decision to the Tribunal's Appeal Division. He argues that the General Division failed to follow procedural fairness, made an error of law, and based its decision on an important factual error. However, he needs permission for his appeal to move forward.

[6] I have to decide whether there is some reviewable error of the General Division on which the appeal might succeed. I am refusing leave to appeal because the Claimant's appeal has no reasonable chance of success.

## Issues

[7] The issues are:

- a) Is there an arguable case that the General Division failed to follow procedural fairness because the Claimant did not have the documents that the Tribunal had?
- b) Is there an arguable case that the General Division made an error of law because the member may or may not have been a lawyer?
- c) Is there an arguable case that the General Division based its decision on an important factual error by not taking into account two calls with an EI agent?
- d) Does the Claimant raise any other reviewable error of the General Division upon which the appeal might succeed?

## I am not giving the Claimant permission to appeal

[8] The legal test that the Claimant needs to meet on an application for leave to appeal is a low one: Is there any arguable ground on which the appeal might succeed?<sup>1</sup>

[9] To decide this question, I focused on whether the General Division could have made one or more of the relevant errors (or grounds of appeal) listed in the *Department of Employment and Social Development Act* (DESD Act).<sup>2</sup>

[10] An appeal is not a rehearing of the original claim. Instead, I must decide whether the General Division:

- a) failed to provide a fair process;
- b) failed to decide an issue that it should have, or decided an issue that it should not have;

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<sup>1</sup> This legal test is described in cases like *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12 and *Ingram v Canada (Attorney General)*, 2017 FC 259 at para 16.

<sup>2</sup> DESD Act, s 58(2).

c) based its decision on an important factual error;<sup>3</sup> or

d) made an error in law.<sup>4</sup>

[11] Before the Claimant can move on to the next stage of the appeal, I have to be satisfied that there is a reasonable chance of success based on one or more of these grounds of appeal. A reasonable chance of success means that the Claimant could argue his case and possibly win. I should also be aware of other possible grounds of appeal not precisely identified by the Claimant.<sup>5</sup>

### **No arguable case that the General Division did not follow procedural fairness**

[12] The Claimant argues that the General Division did not follow procedural fairness. In his application for leave to appeal he states that he did not have all of the documentation from EI that the Tribunal member had.<sup>6</sup>

[13] I have listened to the recording of the hearing before the General Division. The General Division member reviewed the documents in the file, and she confirmed that the Tribunal sent all of the documents to the Claimant by email.

[14] The Claimant had authorized the Tribunal to communicate with him by email. He accessed his email during the hearing and confirmed that he received the documents that were sent to him. He confirmed that he would have read everything that was sent.<sup>7</sup>

[15] The General Division member referred to specific documents and pages as the hearing proceeded and the Claimant had the referenced documents before him. I find

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<sup>3</sup> The language of section 58(1)(c) actually says that the General Division will have erred if it bases its decision on a finding of fact that it makes in a perverse or capricious manner or without regard for the material before it. The Federal Court has defined perverse as “willfully going contrary to the evidence” and defined capricious as “marked or guided by caprice; given to changes of interest or attitude according to whim or fancies; not guided by steady judgment or intent” *Rahi v Canada (Minister of Citizenship and Immigration)* 2012 FC 319.

<sup>4</sup> This paraphrases the grounds of appeal.

<sup>5</sup> *Karadeolian v Canada (Attorney General)*, 2016 FC 615; *Joseph v Canada (Attorney General)*, 2017 FC 391.

<sup>6</sup> AD1-3

<sup>7</sup> Recording of hearing before the General Division at approximately 10:00 to 12:30.

that there is no arguable case that the General Division failed to follow procedural fairness because he did not have the documents that the Tribunal referenced.

### **No arguable case that the General Division made an error of law**

[16] In his application for leave to appeal, the Claimant did not provide additional reasons why he believed the General Division erred, other than the argument considered above. The Claimant was asked to provide additional information and replied in writing.<sup>8</sup>

[17] In the Claimant's response, he stated that the General Division made an error of law. He stated, "[y]ou are not lawyers and have no business enforcing any laws. You're government appointed lackeys."<sup>9</sup>

[18] At the hearing, the Claimant asked the General Division member if she was a lawyer or judge. The member replied that she was a duly appointed adjudicator, mandated to hear appeals before the Social Security Tribunal. The member did not state whether or not she as a lawyer.

[19] The Claimant's argument does not amount to a valid ground of appeal. The member who heard and decided the Claimant's appeal is an appointed member of the Tribunal. Whether the member is a lawyer is not relevant and does not constitute an error of law.

### **No arguable case that the General Division based its decision on a factual error**

[20] The Claimant argues that the General Division made an important error of fact. He says that there were two calls with an EI agent who reviewed his reports and made additions as required. The Claimant argues that these calls were not taken into account, and it was implied that he was a liar because he did not have evidence of the calls or dates.<sup>10</sup>

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<sup>8</sup> AD1B

<sup>9</sup> AD1B-1

<sup>10</sup> AD1B-1

[21] The General Division took this argument into consideration. It stated at the hearing that it asked the Commission if it had records of any other calls.<sup>11</sup> The General Division did not find or imply that the Claimant was lying. It found that, even if the Claimant had earlier conversations with an agent who said they would antedate his claims, the Commission is not bound by statements that an agent may have made.<sup>12</sup>

[22] I find that there is no arguable case that the General Division based its decision on an important factual error. The General Division took all of the Claimant's arguments into consideration.<sup>13</sup> It found that the Claimant did not prove that he had good cause for the delay in applying for benefits. It made this finding with reference to the evidence before it and explained the relevant case law.

[23] The General Division applied the proper legal test and took into consideration all relevant evidence. There is no arguable case that it made an error of law, based its decision on a factual error or failed to follow procedural fairness.

[24] Aside from the Claimant's arguments, I have also considered the other ground of appeal. The Claimant has not pointed to any errors of jurisdiction, and I see no evidence of such errors.

[25] The Claimant has not identified any errors of the General Division upon which the appeal might succeed. As a result, I am refusing leave to appeal.

## **Conclusion**

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

Melanie Petrunia  
Member, Appeal Division

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<sup>11</sup> Recording of hearing before the General Division at approximately 47:00 to 49:00.

<sup>12</sup> General Division decision at para 28.

<sup>13</sup> General Division decision at paras 23 to 28.