



[TRANSLATION]

Citation: *PC v Canada Employment Insurance Commission*, 2023 SST 1179

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

# **Leave to Appeal Decision**

<b>Applicant:</b>	P. C.
<b>Respondent:</b>	Canada Employment Insurance Commission
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<b>Decision under appeal:</b>	General Division decision dated June 9, 2023 (GE-23-611)
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<b>Tribunal member:</b>	Pierre Lafontaine
<b>Decision date:</b>	August 30, 2023
<b>File number:</b>	AD-23-682

## **Decision**

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

## **Overview**

[2] The Applicant (Claimant) made a renewal claim for benefits on August 18, 2022. She asked that the claim be treated as though it was made earlier, on June 8, 2022. The Respondent (Commission) denied 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 did not seek information from the Commission because she was unsure of her entitlement to benefits because of her inheritance. It found that, despite difficult times, the Claimant continued to manage an estate and tried to find another job or get her old job back during the relevant period. The General Division found that a reasonable person in the circumstances would have promptly contacted the Commission to verify their entitlement to benefits.

[4] The General Division found that the Claimant did not show that she had good cause for the delay in applying for benefits throughout the entire period of the delay. It found that the Claimant's claim for benefits could not be treated as though it was made earlier.

[5] 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.

[6] 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**

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

## Preliminary remarks

[8] It is well established that, in deciding this application for permission to appeal, I must consider only the evidence that was before the General Division. The Appeal Division's role is limited by the law.<sup>1</sup>

## 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 her case; she must instead establish that her appeal has a reasonable chance of success. In other words, she has to 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.

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<sup>1</sup> See *Sibbald v Canada (Attorney General)*, 2022 FCA 157. None of the exceptions that would allow me to accept new evidence on appeal apply in this case.

**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 argues that all the events in her personal and professional life are extraordinary. She argues that she could have applied for benefits at other times but that she fought to continue fulfilling her family responsibilities, including managing an estate while looking for a job. She asks the Tribunal to be compassionate and flexible in its application of the law.

[13] The General Division found that a reasonable and prudent person in the Claimant's situation would have promptly contacted the Commission to verify her entitlement to benefits. It found that the Claimant was going through difficult times but that she was able to manage an estate while trying to find another job or get her old job back during the relevant period. It found that the Claimant had not proven that she had good cause for the delay in applying for benefits throughout the entire period of the delay.

[14] It is well established that good faith and ignorance of the law are not in themselves good cause for the delay in applying for benefits.<sup>2</sup>

[15] The Federal Court of Appeal has also determined that a delay in making a claim for benefits based on the expectation of finding a job quickly or on the erroneous assumption of not being entitled to benefits is not good cause under the law.<sup>3</sup>

[16] I sympathize with the Claimant, but I see no reviewable error by the General Division on which the appeal might succeed. The General Division's decision is based on the evidence before it and is consistent with legislation and case law.

[17] I have to repeat the Federal Court of Appeal's guidance that the Appeal Division is not able to make a different finding than the General Division on the same facts, given

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<sup>2</sup> See *Albrecht*, A-172-85; *Larouche*, A-644-93; *Carry*, 2005 FCA 367; *Somwaru*, 2010 FCA 336; *Kaler*, 2011 FCA 266; and *Mauchel*, 2012 FCA 202.

<sup>3</sup> See *Howard v Canada (Attorney General)*, 2011 FCA 116; *Canada (Attorney General) v Innes*, 2010 FCA 341; and *Shebib v Canada (Attorney General)*, 2003 FCA 88.

the extent of its jurisdiction and in the absence of an error of law, a breach of a principle of natural justice, or an arbitrary finding of fact.<sup>4</sup>

[18] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for permission to appeal, I am of the view 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**

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

Pierre Lafontaine  
Member, Appeal Division

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<sup>4</sup> See *Quadir v Canada (Attorney General)*, 2018 FCA 21.