



Citation: *DG v Canada Employment Insurance Commission*, 2023 SST 1035

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: D. G.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated April 28, 2023
(GE-23-16, GE-23-17)

Tribunal member: Stephen Bergen

Decision date: **August 1, 2023**

File number: AD-23-561, AD-23-562

Decision

[1] I am refusing leave (permission) to appeal. The appeal will not proceed.

Overview

[2] D. G. is the Applicant. He made a claim for Employment Insurance (EI) benefits so I will call him the Claimant. The Respondent, the Canada Employment Insurance Commission (Commission), made three decisions that negatively affected the Claimant. The Commission refused to antedate his claim to November 2, 2021. It also refused to pay benefits from January 30, 2022, because the Claimant's loss of employment was due to misconduct. Finally, it disentitled him to benefits from January 20, 2022, because he had not proven he was available for work. The Commission discussed these decisions with the Claimant on April 28, 2022.

[3] The Claimant asked the Commission to reconsider its decision on November 1, 2022, but it refused to do so. It said that the Claimant's request was too late.

[4] The Claimant appealed to the General Division of the Social Security Tribunal. The General Division dismissed his appeal. It found that the Commission made its decision fairly.

[5] The Claimant is now asking the Appeal Division for leave to appeal.

[6] I am refusing leave to appeal. The Claimant has not pointed to any evidence that the General Division ignored or misunderstood, and he has not identified any other error. The Claimant has no reasonable chance of success.

Preliminary Issue

[7] Although the Commission made only one reconsideration decision (November 29, 2023), it had created two separate records. It created one record to deal with the antedate issue; and a second record to deal with the issues of misconduct and availability.

[8] When the Claimant appealed to the General Division, it created two files (GE-23-16 and GE-23-17). However, it joined the two files so it could consider both appeals together. It released a single decision for both appeals.

[9] The Claimant is bringing this application from the joined General Division decision. Like the General Division, the Appeal Division processed the Claimant's application as two separate applications. It assigned two appeal file numbers as a result.

[10] However, my decision will deal with both appeals and all issues arising out of the joined General Division decision. I agree with the General Division that the two decisions share a common question, and that it would not be unfair to consider them together.

[11] Document names and page numbers in this decision are references to documents found in the AD-23-561 file.

Issue

[12] Is there an arguable case that the General Division made an important error of fact when it considered whether the Commission made its decision fairly?

Analysis

General Principles

[13] For the Claimant's application for leave to appeal to succeed, his reasons for appealing would have to fit within the "grounds of appeal." The grounds of appeal identify the kinds of errors that I may consider.

[14] I may consider only the following errors:

- a) The General Division hearing process was not fair in some way.
- b) 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 (error of jurisdiction).
- c) The General Division based its decision on an important error of fact.

d) The General Division made an error of law when making its decision.¹

[15] To grant this application for leave and permit the appeal process to move forward, I must find that there is a reasonable chance of success on one or more grounds of appeal. Other court decisions have equated a reasonable chance of success to an “arguable case.”²

Important Error of Fact

– Lateness of request for reconsideration

[16] A reconsideration request must normally be made within 30 days of the day the decision is communicated.³

[17] At the General Division, the Claimant did not dispute that his reconsideration request was late and the General Division confirmed that the request was late. The Claimant is not arguing that it was wrong about this.

[18] The General Division decided that the Commission acted fairly when it refused to consider the Claimant’s late request. The Claimant is appealing because he believes the General Division made an important error of fact.

– Nature of Commission’s decision

[19] When a claimant is late in requesting a reconsideration, the Commission has “discretion” to allow a claimant additional time to make the request.⁴ This means that the law does not require that the Commission give additional time to a claimant. However, the Commission may choose to give a claimant more time.

[20] In this case, the Commission refused the Claimant additional time.

¹ This is a plain language version of the grounds of appeal. The full text is in section 58(1) of the *Department of Employment and Social Development Act* (DESDA).

² See *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; and *Ingram v Canada (Attorney General)*, 2017 FC 259.

³ See Section 112(1)(a) of the *Employment Insurance Act* (EI Act).

⁴ See Section 112(1)(b) of the EI Act.

[21] Even though the Commission is not required by law to grant more time, it must still consider a claimant's late request. Furthermore, it must act fairly or "judicially" when it does so. A judicial decision is a decision that takes all the relevant factors into account, and does not consider any irrelevant factors.

– **Nature of General Division decision**

[22] The General Division decision was about whether the Commission used its discretion fairly. If the General Division was right that the Commission decided fairly, there was nothing else it could do to change the decision.

[23] The *Reconsideration Request Regulations* (Regulations) say that the Commission must be satisfied that a claimant had a reasonable explanation for requesting a longer period and that they demonstrated a continuing intention to request a reconsideration.⁵

[24] When the Commission evaluates these two factors (the "two factors"), it must use all the evidence that is relevant, and it must not rely on evidence that is irrelevant. This is what the General Division considers when it decides whether the Commission acted fairly.

[25] In this case, the General Division decided that the Commission acted fairly.

– **The Claimant's argument**

[26] The Claimant argues that the General Division made an important error of fact.

[27] In his Application to the Appeal Division, the Claimant makes arguments that are similar to the ones he made to the General Division. He talks again about his explanation for making a late request and restates that he had a continuing intention to appeal.

[28] However, the Claimant does not point to any information that the Commission ignored or misunderstood that would have been relevant to his "reasonable explanation"

⁵ *Reconsideration Request Regulations*, section 1(1).

or to whether he demonstrated a “continuing intention.” Nor does he identify any irrelevant information on which the Commission improperly relied.

[29] Since the Claimant does not identify how any evidence was mishandled by the Commission, he likewise fails to make out an arguable case that the General Division ignored or misunderstood any evidence.

[30] The General Division had to find that the Commission did not act fairly or judicially. If the Commission acted judicially, the General Division could not substitute its judgement or decision for that of the Commission – even if it disagreed with the Commission’s decision.

[31] Likewise, it is not the Appeal Division’s job to reweigh the evidence to reach a different conclusion.⁶ This appeal concerns only whether the General Division made an error in how it found that the Commission’s decision was made fairly.

[32] I appreciate that the Claimant is unrepresented. He may not have understood precisely what he should argue. Therefore, I searched the record for relevant evidence that the General Division may have ignored or misunderstood.⁷

[33] At paragraph 48 of its decision, the General Division summarized the information that the Commission said it considered when it made its decision.⁸

[34] It evaluated this information in light of the Claimant’s testimony,⁹ the explanation he provided with his formal reconsideration request,¹⁰ and some additional background information provided by the Commission.¹¹

[35] At one point, the General Division acknowledged a conflict in the evidence. What the Claimant recalled of the Commission’s explanation of the reconsideration process

⁶ *Bergeron v. Canada (Attorney General)*, 2016 FC 220, *Hideq v. Canada (Attorney General)*, 2017 FC 439, *Parchment v. Canada (Attorney General)*, 2017 FC 354.

⁷ I am following the direction of the Federal Court in decision such as *Karadeolian v. Canada (Attorney General)*, 2016 FC 615

⁸ See GD6-3 and GD3-43

⁹ See General Division decision, para 41-44, 46.

¹⁰ See General Division decision, para 33 and its footnote 14.

¹¹ See GD11-1.

differed from how the process was described in the Commission's April 28, 2022, notes.¹² The General Division preferred the Commission's notes on that point, and explained why it did so.¹³

[36] I have not found evidence in the record:

- a) that is relevant to one of the two factors;
- b) that the Commission failed to consider or appreciate; and
- c) whose mishandling by the Commission was misunderstood or ignored by the General Division.

[37] Likewise, I found no instance where the Commission improperly considered irrelevant evidence to make its decision, and where that use of irrelevant evidence was overlooked by the General Division.

[38] There is no arguable case that the General Division ignored or misunderstood relevant evidence in considering whether the Commission reached its decision fairly.

[39] The Claimant has no reasonable chance of success.

Conclusion

[40] I am refusing permission to appeal. This means that the appeal will not proceed.

Stephen Bergen
Member, Appeal Division

¹² See GD6-3.

¹³ See General Division decision, para 37.