



Citation: *AA v Canada Employment Insurance Commission*, 2023 SST 1105

Social Security Tribunal of Canada Appeal Division

Extension of Time and Leave to Appeal Decision

Applicant: A. A.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated November 13, 2022
(GE-22-988)

Tribunal member: Janet Lew

Decision date: August 15, 2023

File number: AD-23-338

Decision

[1] Leave (permission) to appeal is refused. The appeal will not be going ahead.

Overview

[2] The Applicant, A. A. (Claimant), is seeking leave (permission) to appeal the General Division decision.

[3] The Claimant applied for Employment Insurance sickness benefits in November 2021. The Claimant sought benefits for the period from March 2021 to June 2021. The General Division found that the Claimant was late when she applied for sickness benefits. It also found that she did not have good cause for the delay in applying for benefits. This meant that the application could not be backdated to March 2021 as though it had been made on time.

[4] The Claimant argues that the General Division overlooked important facts that explained why she was late when she applied for benefits. She says that COVID-19 restrictions and her medical condition prevented her from applying for benefits. She also says that she was unaware that she could apply for Employment Insurance sickness benefits while she had an ongoing claim with her disability insurer. She only found out that sickness benefits exist after her doctor told her about them.

[5] Before the Claimant can move ahead with her appeal, I have to decide whether the appeal has a reasonable chance of success.¹ Having a reasonable chance of success is the same thing as having an arguable case.²

[6] There is also the issue about whether the Claimant filed her application to the Appeal Division on time. If the Claimant was late with her application, then she has to get an extension of time. If she does not get an extension of time, this ends her appeal.

¹ Under section 58(2) of the *Department of Employment and Social Development Act* (DESD Act), I am required to refuse permission if am satisfied, "that the appeal has no reasonable chance of success."

² See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

[7] The Claimant was not late when she filed an application to the Appeal Division. However, her appeal does not have a reasonable chance of success. So, the application is refused.

Issues

[8] The issues are:

- i. Was the Claimant late when she filed an application to the Appeal Division?
- ii. If so, should I grant an extension of time?
- iii. If not, is there an arguable case that the General Division overlooked any of the evidence?

Analysis

The application was on time

[9] The General Division issued its decision on November 14, 2022. The Social Security Tribunal (Tribunal) emailed a copy of the decision to the parties on the same day.

[10] When the Tribunal sends a document to a party by email, the document is considered received on the next business day. In this case, the Claimant is deemed to have received the General Division decision on November 15, 2022.

[11] However, the Claimant says that she received the General Division decision on March 6, 2023.³ She denies that she received it before then.⁴ Indeed, phone log notes show that she contacted the Tribunal on March 6, 2023 to ask when she could expect to receive the General Division decision. She claimed that she had not received the General Division's decision yet.

³ Application to the Appeal Division – Employment Insurance, at AD1A-3.

⁴ Claimant's letter dated April 12, 2023.

[12] The Claimant had to file an application to the Appeal Division within 30 days after getting the General Division decision.⁵ The Claimant filed an application on April 4, 2023. This was within the 30-day deadline. She was not late when she filed her application.

I am not giving the Claimant permission to appeal

[13] The Appeal Division must grant permission to appeal unless the appeal has no reasonable chance of success. A reasonable chance of success exists if the General Division arguably made a jurisdictional, procedural, legal, or certain type of factual error.⁶

[14] For factual errors, the General Division had to have based its decision on an error that it made in a perverse or capricious manner, or without regard for the evidence before it.

– Is there an arguable case that the General Division overlooked any of the evidence?

[15] The Claimant argues that the General Division overlooked important evidence that showed she had good cause for the delay in applying for Employment Insurance benefits. She says that the General Division failed to consider the following:

- COVID-19 restrictions, and
- The Claimant's medical condition. She says that she was unable to seek professional help to assist her with her claim due to pain, fatigue, and dry cough for more than a year.

⁵ See section 57(1)(a) of the DESD Act. The section says that an application for leave to appeal must be made to the Appeal Division 30 days after the day on which the decision made by the Employment Insurance Section is communicated to the appellant.

⁶ See section 58(1) of the DESD Act.

[16] The Claimant says that she was unable to apply for benefits between March 2021 and November 2021 because of COVID-19 restrictions and her medical condition.

[17] The General Division noted that the Claimant had to show that she had good cause from March 21, 2021 to November 18, 2021. This required the Claimant to show that she acted as a reasonable and prudent person would have acted in similar circumstances.

[18] The General Division acknowledged the Claimant's assertions that she had good cause because she was sick. She was unable to get professional advice to help with her claim because of pain, fatigue, and a dry cough. As well, she had to stay home because of COVID-19 restrictions. The restrictions also delayed her ability to see doctors.

[19] The General Division accepted the Claimant's evidence and arguments that she was unwell and that there were delays because of COVID-19 restrictions.

[20] However, the General Division found that, even with an ongoing cough and COVID-19 restrictions, a reasonable and prudent person would have made some telephone inquiries as to what types of benefits were available. The General Division was entitled to come to this finding.

[21] While the Claimant may have been unaware of Employment Insurance sickness benefits, the General Division found that the Claimant should have known that she could contact Service Canada to make enquiries and find out what benefits were available, and how she could apply for them, as she had some past experience with Employment Insurance benefits.

[22] The General Division did not overlook the Claimant's evidence. It considered the Claimant's evidence and her arguments that her illness and COVID-19 restrictions caused her delay in applying for benefits. The General Division was also aware that part

of the Claimant's delay was because she did not even know about sickness benefits.⁷ But, this too was not good cause.

[23] The Claimant is asking me to reassess the evidence in her favour. But my role at the leave to appeal stage is to assess whether the appeal has a reasonable chance of success. In any event, I would have come to the same conclusion as the General Division. The General Division's findings on the evidence are consistent with other cases with similar facts.

[24] I am not satisfied that the appeal has a reasonable chance of success. The General Division correctly identified what the Claimant had to show for good cause, and it applied the law to the facts The General Division could reasonably make the findings it did based on the evidence before it.

Conclusion

[25] The Claimant was not late when she filed her application to the Appeal Division.

[26] However, as I am not satisfied that the appeal has a reasonable chance of success, permission to appeal is refused. This means that the appeal will not be going ahead.

Janet Lew
Member, Appeal Division

⁷ Supplementary Record of Claim dated January 13, 2022, at GD3-36.