



Citation: *MO v Canada Employment Insurance Commission*, 2023 SST 1176

**Social Security Tribunal of Canada
Appeal Division**

Leave to Appeal Decision

Applicant: M. O.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated June 30, 2023
(GE-23-880)

Tribunal member: Janet Lew

Decision date: August 28, 2023

File number: AD-23-701

Decision

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

Overview

[2] The Applicant, M. O. (Claimant), is appealing the General Division decision. The General Division dismissed the Claimant's appeal. The General Division found that the Claimant had not brought his appeal on time. As a result, he was unable to appeal reconsideration decisions made by the Respondent, the Canada Employment Insurance Commission (Commission), on April 28, 2021.¹

[3] This meant the Commission's reconsideration decisions stood. The Commission had determined that the Claimant had voluntarily left his employment without just cause. The Commission also determined that the Claimant had not proven his availability for work until April 11, 2021.² For these reasons, the Claimant was not entitled to receive Employment Insurance benefits. He was left with an overpayment.

[4] The Claimant argues that the General Division made procedural, legal, and factual errors in dismissing his appeal. He argues that his appeal should be allowed and that the matter be returned to the General Division for a full hearing.

[5] Before the Claimant can move ahead with his appeal, I have to decide whether the appeal has a reasonable chance of success. In other words, there has to be an arguable case.³ If the appeal does not have a reasonable chance of success, this ends the matter.⁴

¹ The General Division hearing file contained only one reconsideration decision dated April 28, 2021. However, the Claimant confirmed that he received two separate reconsideration decisions. See GD 2-16.

² See Reconsideration decision dated April 28, 2021, at GD 3-49, and initial decision dated March 16, 2021, at GD 3-33.

³ *Fancy v Canada (Attorney General)*, 2010 FCA 63.

⁴ Under section 58(2) of the *Department of Employment and Social Development (DESD) Act*, I am required to refuse permission if I am satisfied "that the appeal has no reasonable chance of success."

[6] I am not satisfied that the appeal has a reasonable chance of success. Therefore, I am not giving permission to the Claimant to move ahead with his appeal.

Issue

[7] Is there an arguable case that the General Division made any procedural, legal, or factual errors?

I am not giving the Claimant permission to appeal

[8] 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.⁵

[9] 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 made any procedural, legal, or factual errors?

[10] The Claimant argues the General Division made procedural, legal, or factual errors.

– The Claimant argues the General Division overlooked important evidence

[11] The Claimant provided information that he says the General Division failed to consider.

[12] The Social Security Tribunal (Tribunal) had asked the Claimant to confirm whether he spoke with the Commission on April 28, 2021. The Tribunal also asked him to confirm when he received the letter of April 28, 2021 from the Commission.⁶

⁵ See section 58(1) of the DESD Act.

⁶ Social Security Tribunal letter dated April 26, 2023, at GD5.

[13] The Claimant responded to this request on May 9, 2023.⁷ He advised that he was unable to confirm whether he spoke with the Commission on that date. He did not indicate when he received the Commission's letter of April 28, 2021.

[14] The Claimant also described his communications with Service Canada. He wrote, "You will note from my long explanation my appeal request the evidence that I kept pursuing this because I was never told, to my understanding, that my benefits had been disallowed in April. Had I understood that, I would not be at this point in filing a late appeal."⁸

[15] The General Division did not address the Claimant's assertions that no one ever told him that his claim for Employment Insurance benefits had been disallowed.

[16] Even so, the evidence does not support the Claimant's assertions that no one ever told him his claim had been disallowed. The reconsideration decision of April 28, 2021 on file clearly indicates that the Commission was unable to pay him any Employment Insurance benefits (for the dates set out in the letter) because it determined that the Claimant was unavailable for work and because he had voluntarily left his employment without just cause.

[17] Apart from that, this evidence was irrelevant to the central issue before the General Division. The General Division had to determine whether the Claimant had brought his appeal more than one year after the day on which the reconsideration decisions had been communicated to him.

[18] If the Claimant filed his appeal more than one year after the day the decision had been communicated to him, then he would be out of time.⁹ The General Division would have had no authority to consider granting an extension of time. Any other considerations would have been irrelevant.

⁷ Claimant's response dated May 9, 2023, at GD6.

⁸ Claimant's response dated May 9, 2023, at GD6-2.

⁹ Section 52(2) of the DESD Act.

[19] The General Division considered two facts:

1. when the reconsideration decisions had been communicated to the Claimant and
2. when the Claimant brought his appeal.

[20] The General Division determined that the reconsideration decisions had been communicated to the Claimant on April 28, 2021, and that he brought his appeal of the reconsideration decisions close to two years later, on March 22, 2023.

[21] I note that the evidence indicates that the General Division wrote that the decisions were dated April 28, 2021.¹⁰ The member noted that the Claimant mentioned in his Notice of Appeal that the decisions had been communicated to him on April 28, 2021.¹¹ The Claimant wrote that he spoke with a Service Canada agent that day. The agent advised him that the Commission was maintaining its original decision. From this, the General Division concluded that the Commission's reconsideration decisions had been communicated to the Claimant on April 28, 2021.

[22] The Claimant does not challenge the General Division's findings that the decisions had been communicated to him on April 28, 2021.

[23] The Claimant's evidence about his communications with Service Canada was irrelevant. So, the General Division did not need to consider this evidence when it made its decision. I am not satisfied that there is an arguable case that the General Division overlooked any important evidence.

– The Claimant argues the General Division considered the wrong factors

[24] The Claimant argues that the General Division considered the wrong factors in deciding whether to grant him an extension of time to bring his appeal. The Claimant

¹⁰ General Division decision at para 8.

¹¹ General Division decision at para 9. The Claimant noted that he had received "multiple reconsideration decisions" but did not specify when he received them – see GD 2-4.

argues that the General Division should have considered whether he had a continuing intention to pursue an appeal.

[25] I am not satisfied that the Claimant has an arguable case that the General Division considered the wrong factors. As the General Division pointed out, and I have noted above, section 52(2) of the *Department of Employment and Social Development Act* lets the General Division extend the time for filing unless more than one year has passed from the time the decision was communicated to the appellant.

[26] The General Division does not have any authority to extend the time under any circumstances once a year has passed. There are no exceptions to this rule, even if an appellant has a strong case otherwise. The Federal Court confirmed this interpretation in a case called *Conte*.¹²

– **The Claimant argues that the General Division made procedural errors**

[27] Finally, the Claimant argues that the General Division made procedural errors. However, he has not identified any procedural errors.

[28] The General Division let the Claimant know what the case was about. It let him know that his application was late and that it was considering whether it could grant him an extension of time to file the application. The General Division gave the Claimant an opportunity to address this issue.¹³ I do not see any evidence that the process was unfair to the Claimant.

[29] I am not satisfied that there is an arguable case that the General Division made any procedural errors or that it somehow failed to follow the rules of procedural fairness.

¹² See *Conte v Canada (Attorney General)*, 2021 FC 1182. See also *Mahmood v Canada (Attorney General)*, 2016 FC 487. In *Conte*, the Court examined section 57(2) of the DESD Act, which has similar wording to section 52(2) of the DESD Act.

¹³ Social Security Tribunal letter dated April 26, 2023, at GD5

– **The Claimant's notice of debt**

[30] The Claimant has an overpayment that he is expected to repay. The debt has upended his life. He says it is no longer financially feasible for him to continue his post-secondary studies because of the size of the debt he now owes.

[31] I do not have any authority to waive or reduce any of the overpayment, but the Claimant's Notice of Debt outlines options and provides contact information. If he has not already done so, he can contact Canada Revenue Agency (CRA) to seek relief or ask about any repayment arrangements. CRA could assess his financial situation and make recommendations to the Commission about writing off or reducing the overpayment.

Conclusion

[32] I am not satisfied that the appeal has a reasonable chance of success. As the Claimant filed a Notice of Appeal more than a year after the reconsideration decisions had been communicated to him, the General Division had little choice but to conclude that the appeal could not go ahead.

[33] I am refusing permission to appeal. This means that the appeal will not proceed at the Appeal Division.

Janet Lew
Member, Appeal Division