



Citation: *JP v Canada Employment Insurance Commission*, 2023 SST 244

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

# **Leave to Appeal Decision**

**Applicant:** J. P.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated July 12, 2023  
(GE-23-876)

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**Tribunal member:** Stephen Bergen

**Decision date:** September 21, 2023

**File number:** AD-23-764

## Decision

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

## Overview

[2] J. P. is the Applicant. He made a claim for Employment Insurance (EI) benefits so I will call him the Claimant. The Claimant left his job in May 2022 because his employer decided to deny his requested vacation time, after he had booked overseas travel. The Claimant applied for EI benefits in December 2022, which was some time after he returned to Canada. He asked for the Commission to antedate his benefits to May 5, 2022.

[3] The Respondent, the Canada Employment Insurance Commission (Commission) refused to antedate his claim because it did not accept that he had a good reason for the entire period of his delay. In the same decision, it found that he had voluntarily left his job without cause, which meant that he was disqualified from receiving benefits regardless. When the Claimant asked the Commission to reconsider, it would not change its decision.

[4] The Claimant appealed both issues to the General Division of the Social Security Tribunal. The General Division issued a separate decision for each issue. In one of the decisions, the General Division found that the Claimant had just cause to leave his employment. This means that he is not disqualified from receiving benefits. The Claimant is not appealing that decision.

[5] The Commission dismissed the Claimant's appeal on the antedate issue. It held that he did not have good cause for the delay. The Claimant is asking for leave to appeal this decision to the Appeal Division.

[6] I am refusing the Claimant's request for leave to appeal. There is no arguable case that the General Division made an error in how it made its decision.

## Preliminary Issue

[7] The Claimant did not identify any ground of appeal in his application to the Appeal Division. The Tribunal wrote to the Claimant on August 29, 2023, to describe the grounds of appeal and to ask him to explain again why he thought the General Division made an error.

[8] The Claimant responded on September 11, 2023, but he did not explain how the General Division made an error. Instead, he restated why it took him so long to apply for benefits.

[9] However, I appreciate that the Claimant is not represented. The Federal Court has said that the Appeal Division should be especially careful with self-represented parties, who may not know how to frame their appeal. It has suggested that the Appeal Division should review the record to see if important evidence has been overlooked or misunderstood.<sup>1</sup>

[10] Accordingly, I have reviewed the record to see if the General Division made an important error of fact.

## Issue

[11] Did the General Division make an important error of fact by overlooking or misunderstanding relevant evidence?

## Analysis

### General Principles

[12] 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 can consider.

[13] I may consider only the following errors:

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<sup>1</sup> See the decision in *Karadeolian v. Canada (Attorney General)*, 2016 FC 615.

- 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.<sup>2</sup>

[14] To grant this application for leave and permit the appeal process to move forward, I must find that the Claimant has 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.”<sup>3</sup>

### **Important error of fact**

[15] An important error of fact is where the General Division bases its decision on a mistaken finding that ignored or misunderstood relevant evidence, or does not follow from the evidence.<sup>4</sup>

[16] There is no arguable case that the General Division made an important error of fact.

[17] The General Division understood that the Claimant quit his job on May 6, 2022, and left the country within days. It understood that he was away for about two months, and that he applied for benefits on December 5, 2022. These facts are not in dispute.

[18] It also understood that the Claimant’s explanation for the delay was that he was looking for work and hopeful that he would find something, and not need EI benefits. It understood that he also said he was new to Canada and did not understand the EI

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<sup>2</sup> 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).

<sup>3</sup> See *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; and *Ingram v Canada (Attorney General)*, 2017 FC 259.

<sup>4</sup> This is a paraphrase. Section 58(1)(c) of the DESDA states that the General Division makes a (reviewable) error of fact when it has “based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.”

system. This is supported by the evidence on the file, as well as by the Claimant's submissions.

[19] I note that the Claimant told the Commission that a friend suggested that he apply for EI benefits sometime in November 2022 (before November 15). He said his friend told him how to contact the Commission. The Claimant said that he made a few attempts to call the Commission before he finally spoke to someone in the last week of November. At that point, the Commission agent suggested he apply and ask for an antedate.<sup>5</sup>

[20] The General Division did not mention this evidence but there is no arguable case that this is an important error of fact. It is not required to refer to all the evidence in every case.<sup>6</sup>

[21] Here, the General Division may be presumed to have understood that the Claimant only learned about EI benefits in November. This evidence is not significant enough that the General Division should have mentioned it: It would not have changed the General Division's decision.

[22] The General Division decided that the Claimant did not have good cause for the delay. It was correct that the law requires a claimant to act as a reasonable and prudent person would act in similar circumstances. It was also correct that ignorance of the law is not accepted as good cause, and that a claimant must take reasonably prompt steps to understand his rights and responsibilities under the law.<sup>7</sup>

[23] The General Division based its decision on a finding that the Claimant did not take reasonably prompt steps to understand his rights and obligations. It may well have been November before he understood that he could apply for benefits, but this does not change the fact that he had done nothing to discover his rights and obligations earlier. The General Division found that he could have done so. It said the Claimant could

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<sup>5</sup> See GD3-33.

<sup>6</sup> *Simpson v Canada (Attorney General)*, 2012 FCA 82.

<sup>7</sup> See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

easily have learned about EI by going into a Service Canada office, calling, or going online.

[24] Finally, the General Division did not accept that the Claimant had exceptional circumstances that might excuse him from having to take reasonably prompt steps. I have not found evidence of exceptional circumstances that the General Division ignored or misunderstood, and its finding follows rationally from the evidence that was before it.

[25] The General Division referred to the fact that the Claimant had been in Canada for four years before quitting, held two full-time jobs, and had an impressive record of education and experience. From this it concluded that he is capable of navigating rules and regulations and could have easily discovered his rights and obligations related to EI benefits.

[26] The Claimant's appeal has no reasonable chance of success.

## **Conclusion**

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

Stephen Bergen  
Member, Appeal Division