



[TRANSLATION]

Citation: *MG v Canada Employment Insurance Commission*, 2023 SST 1369

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: M. G.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated
July 4, 2023(GE-23-903)

Tribunal member: Pierre Lafontaine

Decision date: October 11, 2023

File number: AD-23-771

Decision

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

Overview

[2] The Applicant (Claimant) applied for Employment Insurance (EI) benefits. After receiving a request for reconsideration from the employer, the Respondent (Commission) found on June 21, 2021, that the Claimant lost his job because of misconduct. So, it could not pay him EI benefits.

[3] On March 23, 2023, the Claimant appealed the Commission's reconsideration decision to the Tribunal's General Division.

[4] The General Division found that it had no choice but to apply the law, which says that the General Division may extend the time to appeal up to one year after the reconsideration decision is communicated.¹ The appeal was not heard.

[5] The Claimant now seeks permission from the Appeal Division to appeal the General Division decision. He argues that he disagrees with the General Division decision. He argues that the process is too complicated. He is human and did not check his emails.

[6] I have to decide whether there is an arguable case that the General Division made a reviewable error based on which the appeal has a reasonable chance of success.

[7] 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.

¹ See section 52(2) of the *Department of Employment and Social Development Act*.

Issue

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

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 his case; he must instead establish that the appeal has a reasonable chance of success. In other words, he must 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.

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 he disagrees with the General Division decision. He argues that the process is too complicated. He is human and did not check his emails.

[13] The Commission's reconsideration decision was issued on June 21, 2021. The Commission notified the Claimant verbally twice of his right to appeal after this decision.² A letter was sent to him on June 21, 2021, telling him of his right to appeal within 30 days of receiving the letter.

[14] As the General Division pointed out, the address on the June 21, 2021, decision letter is the same as the one on its March 23, 2023, notice of appeal. Nothing was mailed back. A notice of debt was also sent to him on June 26, 2021, after the reconsideration decision.

[15] The evidence shows that the Claimant received the Commission's reconsideration decision in June 2021. He did not file his notice of appeal until March 23, 2023, which was 21 months later.

[16] This means that more than one year passed between the time the Commission's reconsideration decision was communicated to the Claimant and the time the Claimant duly appealed it to the General Division.

[17] I sympathize with the Claimant. But, the law clearly states that the General Division cannot extend the time to appeal beyond one year after the reconsideration decision is communicated.

[18] Unfortunately, the law does not give the Tribunal the discretion to allow more than one year to appeal to the General Division, not even on compassionate grounds.³

[19] For the reasons I have mentioned above and after reviewing the appeal file, the General Division decision, and considering the Claimant's arguments in support of his application for permission to appeal, I have no choice but to find that the appeal has no reasonable chance of success.

² May 27 and June 21, 2021.

³ *BT v Canada Employment Insurance Commission*, 2017 CanLII 91786 (SST).

Conclusion

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

Pierre Lafontaine
Member, Appeal Division