



[TRANSLATION]

Citation: *YG v Canada Employment Insurance Commission*, 2023 SST 222

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: Y. G.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated
September 15, 2023 (GE-23-867)

Tribunal member: Pierre Lafontaine

Decision date: November 14, 2023

File number: AD-23-941

Decision

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

Overview

[2] On September 9, 2020, the Respondent (Commission) determined that the Applicant (Claimant) was not available for work, and it sent him a notice of debt. On October 31, 2022, the Claimant asked the Commission to reconsider its initial decision.

[3] On December 13, 2022, the Commission told him that it would not reconsider the September 9, 2020, decision. It said that it had looked at his reasons for his late reconsideration request and found that they did not meet the requirements of the *Reconsideration Request Regulations*. The Claimant appealed to the General Division.

[4] The General Division found that the Commission exercised its discretion judicially when it denied the Claimant an extension of time to ask for a reconsideration.

[5] The Claimant is now asking the Appeal Division for permission to appeal the General Division decision. In support of his application for permission to appeal, he argues that the General Division failed to consider the COVID-19 health crisis. He argues that he tried to receive the Canada Emergency Response Benefit (CERB) in the summer of 2020, but was unsuccessful.

[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.

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 the General Division failed to consider the health crisis caused by COVID-19. He argues that the deadlines should have been waived. He says that he tried everything to get the CERB in the summer of 2020, but was unsuccessful.

[13] The issue before the General Division concerned the Claimant's failure to ask the Commission to reconsider its decision within the 30-day time limit.

[14] The General Division had to decide whether the Commission exercised its discretion judicially when it denied the request to extend the 30-day time limit to ask for a reconsideration of the initial decision.¹

[15] The Claimant did not ask for a reconsideration of the Commission's decision until October 31, 2022, which was more than 365 days after the decision. The Claimant had known about the decision for more than 30 days, since he was trying to claim the CERB to cancel the overpayment caused by the September 9, 2020, decision.

[16] After reviewing the Claimant's evidence, the General Division found that the Commission had properly exercised its discretion.

[17] The General Division found that the Claimant had not given a reasonable explanation for the 730-day delay in asking for a reconsideration. It found that the Claimant had the opportunity to read the content of the initial decision, which indicated, among other things, that he had 30 days to ask the Commission for a reconsideration. That decision also told him not to wait for the recovery of the amount he owed and to ask for a reconsideration as soon as possible if he disagreed with the decision. The General Division considered the COVID-19 health crisis, but that does not justify a two-year delay in asking for a reconsideration.

[18] The General Division found that the Claimant had not shown that he had a continuing intention to ask for a reconsideration. A notice of debt was sent to him on October 31, 2020. It was only after his difficulties in obtaining the CERB that he decided to ask for a reconsideration late.

[19] The General Division found that the Commission acted in good faith, considered all the relevant circumstances on file, while ignoring any irrelevant factors, when it refused to extend the time to ask for a reconsideration. It found that the Commission

¹See section 112(1)(b) of the *Employment Insurance Act* and section 1 of the *Reconsideration Request Regulations*.

exercised its discretion judicially when it refused to extend the time to ask for a reconsideration of the initial decision.

[20] I note that, in his notice of appeal to the General Division, the Claimant indicates that he does not dispute the September 9, 2020, decision that he was not available for work and says that he agrees to pay back the amount of money representing the benefits he was overpaid.

[21] The General Division could not depart from the law to fix the Claimant's delay in asking for a reconsideration, even for compassionate reasons.

[22] In support of his application for permission to appeal, the Claimant has not identified any errors of jurisdiction or failure by the General Division to observe a principle of natural justice. He has not identified errors of law or any erroneous findings of fact that the General Division may have made in a perverse or capricious manner or without regard for the material before it in coming to its decision.

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

Conclusion

[24] Permission to appeal is refused. This means that the appeal will not proceed.

Pierre Lafontaine
Member, Appeal Division