



Citation: *MH v Canada Employment Insurance Commission*, 2023 SST 1277

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: M. H.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated July 4, 2023
(GE-22-4290)

Tribunal member: Pierre Lafontaine

Decision date: September 15, 2023

File number: AD-23-727

Decision

[1] Leave to appeal is refused. This means the appeal will not proceed.

Overview

[2] The Applicant (Claimant) applied for Employment Insurance (EI) benefits on June 19, 2021. He requested that his application be treated as though it was made earlier, on March 14, 2021.

[3] The Respondent (Commission) decided that the Claimant did not have good cause because he did not make any effort to find out what his rights to benefits were before applying for benefits on June 19, 2021. After an unsuccessful reconsideration, the Claimant appealed to the General Division.

[4] The General Division concluded that the Claimant did not prove good cause because he did not act as a reasonable and prudent person would have done in similar circumstances. Therefore, his antedate request was refused.

[5] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. He submits that he was not familiar with the EI process. He thought he had more time to apply. He submits that receiving a severance package and having potential job leads led him to believe he would not need EI benefits. The Claimant submits that he tried contacting Service Canada by phone but never got a call back. He submits that he acted like a reasonable person in his circumstances and had good cause for the entire delay.

[6] I must decide whether the Claimant raised some reviewable error of the General Division upon which the appeal might succeed.

[7] I refuse leave to appeal because the Claimant's appeal has no reasonable chance of success.

Issue

[8] Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

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 that:

1. The General Division hearing process was not fair in some way.
2. 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.
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 leave 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 on the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove his case but must establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, that there is arguably some reviewable error upon which the appeal might succeed.

[11] Therefore, before I can grant leave, I need to be satisfied that the reasons for appeal fall within any of the above-mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success.

Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

[12] The Claimant submits that he was not familiar with the EI process. He thought he had more time to apply. He submits that receiving a severance package and having

potential job leads led him to believe he would not need EI benefits. The Claimant submits that he tried contacting Service Canada by phone but never got a call back. He submits that he acted like a reasonable person in his circumstances and had good cause for the entire delay.

[13] To establish good cause, a claimant must be able to show that they did what a reasonable person in their situation would have done to satisfy themselves as to their rights and obligations under the law.¹ Claimants have a duty to ask promptly about their rights and obligations and the steps that should be taken to protect a claim for benefits.²

[14] A record of employment was issued March 24, 2021, stating the Claimant stopped working March 10, 2021, due to K-Other (re-organization).³

[15] The General Division considered that the Claimant received a severance package and thought this might affect his entitlement to EI benefits. It considered that he had followed potential job leads instead of applying for EI benefits. The General Division considered that the Claimant tried to reach the Commission late and only after he had applied for EI benefits in June 2021.

[16] The General Division found that a reasonable and prudent person in the Claimant's circumstances would have tried to get information from Service Canada about his rights and obligations promptly after losing his job. The General Division concluded that the Claimant did not prove good cause for the entire delay, from March 14 to June 19, 2021, because he did not act as a reasonable and prudent person would have done in similar circumstances. It found no exceptional circumstances that prevented him to do so.

[17] It is well established that good faith and ignorance of the law do not in themselves constitute a valid reason to justify the delay in filing a request for EI

¹ Section 10(4) of the *Employment Insurance Act*.

² *Canada (Attorney General) v Kaler*, 2011 FCA 266; *Canada (Attorney General) v Dickson*, 2012 FCA 8.

³ See GD3-15.

benefits.⁴ A delay in applying for EI benefits based on an incorrect and unverified assumption that a claimant would not be eligible does not constitute good cause for purposes of the EI Act.⁵

[18] As admirable as it might be, the Claimant's intention of seeking alternative employment instead of applying promptly for EI benefits is also not good cause for delay.⁶

[19] I must reiterate that it is not permissible for the Appellate Division to draw a different conclusion from that of the General Division based on the same facts given the extent of its jurisdiction and the absence of an error of law, a breach of a principle of natural justice or an arbitrary conclusion of fact.⁷

[20] After reviewing the appeal file and the General Division's decision as well as considering the Claimant's arguments in support of his request for leave to appeal, I have no choice but to find that the appeal has no reasonable chance of success. The Claimant has not set out a reason, which falls into the above-enumerated grounds of appeal that could possibly lead to the reversal of the disputed decision.

Conclusion

[21] Leave to appeal is refused. This means the appeal will not proceed.

Pierre Lafontaine
Member, Appeal Division

⁴ *Albrecht*, A-172-85, *Larouche*, A-644-93, *Carry*, 2005 FCA 367, *Somwaru*, 2010 FCA 336, *Kaler*, 2011 FCA 266, *Mauchel*, 2012 FCA 202.

⁵ *Howard v Canada (Attorney general)*, 2011 FCA 116, *Canada (Attorney general) v Innes*, 2010 FCA 341, *Shebib v Canada (Attorney general)*, 2003 FCA 88.

⁶ *Howard v Canada (Attorney General)*, 2011 FCA 116; *Canada (Attorney General) v Innes*, 2010 FCA 341; *Shebib v Canada (Attorney General)*, 2003 FCA 88.

⁷ *Quadir c Canada (Attorney General)*, 2018 FCA 21.