



Citation: *AF v Canada Employment Insurance Commission*, 2023 SST 1731

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: A. F.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated August 9, 2023
(GE-23-1270)

Tribunal member: Melanie Petrunia

Decision date: November 30, 2023

File number: AD-23-776

Decision

[1] Leave (permission) to appeal is refused. The appeal will not proceed.

Overview

[2] The Applicant, A. F. (Claimant) applied for employment insurance (EI) benefits on January 11, 2023, but asked that the application be treated as though it was made on November 13, 2022.

[3] The Respondent, the Canada Employment Insurance Commission (Commission) refused the Claimant's request. It decided that he hadn't shown good cause for the delay in applying.

[4] The Claimant's appeal to the General Division was dismissed. The General Division found that the Claimant did not show that he had good cause for the delay in applying for benefits so his application could not be treated as though it was made earlier.

[5] The Claimant is now asking to appeal the General Division decision to the Tribunal's Appeal Division. However, he needs permission for his appeal to move forward. The Claimant argues the General Division based its decision on important factual errors.

[6] I have to decide whether there is some reviewable error of the General Division on which the appeal might succeed. I am refusing leave to appeal because the Claimant's appeal has no reasonable chance of success.

Issue

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

I am not giving the Claimant permission to appeal

[8] The legal test that the Claimant needs to meet on an application for leave to appeal is a low one: Is there any arguable ground on which the appeal might succeed?¹

[9] To decide this question, I focused on whether the General Division could have made one or more of the relevant errors (or grounds of appeal) listed in the *Department of Employment and Social Development Act* (DESD Act).²

[10] An appeal is not a rehearing of the original claim. Instead, I must decide whether the General Division:

- a) failed to provide a fair process;
- b) failed to decide an issue that it should have, or decided an issue that it should not have;
- c) based its decision on an important factual error;³ or
- d) made an error in law.⁴

[11] Before the Claimant can move on to the next stage of the appeal, I have to be satisfied that there is a reasonable chance of success based on one or more of these grounds of appeal. A reasonable chance of success means that the Claimant could argue his case and possibly win. I should also be aware of other possible grounds of appeal not precisely identified by the Claimant.⁵

¹ This legal test is described in cases like *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12 and *Ingram v Canada (Attorney General)*, 2017 FC 259 at para 16.

² DESD Act, s 58(2).

³ The language of section 58(1)(c) actually says that the General Division will have erred if it bases its decision on a finding of fact that it makes in a perverse or capricious manner or without regard for the material before it. The Federal Court has defined perverse as “willfully going contrary to the evidence” and defined capricious as “marked or guided by caprice; given to changes of interest or attitude according to whim or fancies; not guided by steady judgment or intent” *Rahi v Canada (Minister of Citizenship and Immigration)* 2012 FC 319.

⁴ This paraphrases the grounds of appeal.

⁵ *Karadeolian v Canada (Attorney General)*, 2016 FC 615; *Joseph v Canada (Attorney General)*, 2017 FC 391.

There is no arguable case that the General Division erred

[12] The General Division had to decide whether the Claimant could antedate (or backdate) his application for EI benefits to November 13, 2022. To do so, the Claimant had to show “good cause” for filing his application for EI benefits late for the entire period of the delay.⁶

[13] To establish good cause, the Claimant has to show that he did what a reasonable person would have done in similar circumstances to satisfy himself of his rights and obligations under the law.⁷ This includes an obligation to take reasonably prompt steps to determine if they qualify for benefits.

[14] The General Division found that the Claimant did not prove that he had good cause for the delay in applying for benefits because he did not look into what he needed to do to receive EI benefits.⁸ It relied on the following findings:

- a) The Claimant had received the Canada Emergency Response Benefit (CERB) and when this ended, he was told to apply for EI benefits.⁹
- b) When the Claimant lost his job, he focused on finding a lawyer and trying to get his job back.¹⁰
- c) The Claimant’s depression did not prevent his from looking for a lawyer to take legal action and he could have been researching his entitlement to EI benefits.¹¹

[15] The Claimant argues that the General Division based its decision on an important error of fact. He says that the General Division belittled and dismissed his depressive state by finding that his illness was not a good enough excuse for the delay in applying

⁶ See section 10(4) of the *Employment Insurance Act* (EI Act).

⁷ See *Canada (Attorney General) v Kaler*, 2011 FCA 266 at paragraph 4 and *Canada (Attorney General) v Mendoza*, 2021 FCA 36 at paragraphs 13 and 14.

⁸ General Division decision at para 34.

⁹ General Division decision at para 32.

¹⁰ General Division decision at para 33.

¹¹ General Division decision at para 34.

for benefits. He argues that he was not of sound mind during the period of delay and it was an error for the General Division to find that he was.¹²

[16] The Claimant says that the loss of his job put him into a state of deep depression and the things he focused on during that time were not reasonable. When he found a therapist in January 2023, he was able to find a path out of his depressive state.¹³

[17] I understand the Claimant's frustration with the General Division's findings concerning his depression. However, I find that the Claimant's arguments do not have a reasonable chance of success. There is no arguable case that the General Division failed to consider the Claimant's evidence concerning his depression.

[18] In its decision, the General Division accepted the Claimant's testimony as candid and honest.¹⁴ It acknowledged that losing his job led to a period of depression for the Claimant. But, it found that the depression did not have a debilitating effect on him.¹⁵

[19] The General Division determined that the Claimant was able to research hiring a lawyer and pursuing legal action against his employer during November and December and he could have also been looking into his entitlement to EI benefits during this time.¹⁶ It also relied on the fact that he had been told to apply for regular EI benefits when he stopped receiving CERB.¹⁷

[20] The General Division took the Claimant's evidence into consideration. It has the authority to weigh the evidence before it and to decide which evidence it will prefer. I cannot reweigh the evidence in a different way and come to a different conclusion. I can only intervene when the General Division bases its decision on an important error of fact, made in a perverse or capricious manner or without regard for the material before it.¹⁸

¹² AD1-6

¹³ AD1-6

¹⁴ General Division decision at para 29.

¹⁵ General Division decision at para 33.

¹⁶ General Division decision at para 29.

¹⁷ General Division decision at para 32.

¹⁸ See section 58(1)(c) of the DESD Act.

[21] The General Division weighed the evidence and determined that the Claimant did not take reasonably prompt steps to inquire about his rights and obligations under the law during the period of delay. It found that his depression was not an exceptional circumstance that would excuse him from taking reasonably prompt steps.¹⁹

[22] There is no arguable case that the General Division based its decision on an important mistake about the facts of the case. The General Division applied the proper legal test and took into consideration all relevant evidence.

[23] Aside from the Claimant's arguments, I have also considered the other grounds of appeal. The Claimant has not pointed to any errors of jurisdiction, and I see no evidence of such errors. There is no arguable case that the General Division made any errors of law or failed to follow procedural fairness.

[24] The Claimant has not identified any errors of the General Division upon which the appeal might succeed. As a result, I am refusing leave to appeal.

Conclusion

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

Melanie Petrunia
Member, Appeal Division

¹⁹ General Division decision at para 22.