



Citation: *TT v Canada Employment Insurance Commission*, 2023 SST 1476

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

# **Leave to Appeal Decision**

**Applicant:** T. T.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated July 31, 2023  
(GE-23-640)

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**Tribunal member:** Melanie Petrunia

**Decision date:** November 9, 2023

**File number:** AD-23-785

## **Decision**

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

## **Overview**

[2] The Applicant, T. T. (Claimant) applied for employment insurance (EI) benefits on October 6, 2022, but asked that the application be treated as though it was made on June 19, 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?<sup>1</sup>

[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).<sup>2</sup>

[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;<sup>3</sup> or
- d) made an error in law.<sup>4</sup>

[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.<sup>5</sup>

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<sup>1</sup> 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.

<sup>2</sup> DESD Act, s 58(2).

<sup>3</sup> 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.

<sup>4</sup> This paraphrases the grounds of appeal.

<sup>5</sup> *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 June 19, 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.<sup>6</sup>

[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.<sup>7</sup> 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 make any efforts to contact Service Canada to confirm what benefits were available to him before he applied.<sup>8</sup>

[15] The Claimant argues that the General Division based its decision on important mistakes about the facts of the case and that the General Division did not address his questions and concerns. The Claimant makes three arguments about the General Division errors.

[16] First, the Claimant says that he had requested a transcript of a phone conversation with a Service Canada agent. The Commission said that they do not record phone calls and provided a summary of the call in the record. The Claimant says that important information is omitted from the summary.<sup>9</sup>

[17] I find that this argument does not have a reasonable chance of success. While the Claimant may be frustrated by the lack of a transcript of his conversation with Service Canada, this does not amount to an error by the General Division.

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<sup>6</sup> See section 10(4) of the *Employment Insurance Act* (EI Act).

<sup>7</sup> 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.

<sup>8</sup> General Division decision at paras 31 and 33 to 36.

<sup>9</sup> AD1-8

[18] The conversation that the Claimant refers to occurred during the reconsideration process, on February 14 and 15, 2023.<sup>10</sup> The General Division found that the Claimant did not make any efforts to contact the Commission during the period of delay from June 19 to October 6, 2022.

[19] The Claimant is concerned that certain comments made by the Service Canada agent were not properly recorded in his notes. There is no indication that these comments would have been relevant to the issue that the General Division had to decide.

[20] The second argument that the Claimant makes is that he requested statistical information about the rejection of antedating claims due to misinterpretation, confusion, or lack of awareness by claimants. He says that, if there are many such claims, Service Canada should not be absolved from responsibility for addressing the problem.<sup>11</sup>

[21] This argument also does not point to any of the possible errors that I can consider. The General Division had to consider the Claimant's circumstances and evidence and apply the law. Statistical information about other claimants is not relevant. The fact that the Claimant was not provided with this information does not amount to an error of fact, or any other reviewable error on the part of the General Division.

[22] Finally, the Claimant argues that the General Division was wrong to conclude that he took no steps with his employer or Service to have his ROE amended until months after he was told he wasn't needed back at work. He says that he did all he could to ensure his claim was submitted in a timely fashion.<sup>12</sup>

[23] The Claimant argues that he was on standby from May to August expecting to be called back into work. He says that no reasonable person would contact Service Canada when they thought they would be returning to work at a moment's notice.<sup>13</sup>

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<sup>10</sup> See GD3-21

<sup>11</sup> AD1-8

<sup>12</sup> AD1-8

<sup>13</sup> AD1-8

[24] I find that this argument does not have a reasonable chance of success. The General Division considered all of the Claimant's arguments and evidence. It acknowledged that the Claimant did not confirm with his employer until August 2022 that he was not needed back at work.<sup>14</sup> It also considered that he did not contact Service Canada about benefits until October 6, 2022.<sup>15</sup>

[25] 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 there were no exceptional circumstances that would excuse him from taking reasonably prompt steps.

[26] 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.

[27] 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.

[28] 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**

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

Melanie Petrunia  
Member, Appeal Division

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<sup>14</sup> General Division decision at para 18.

<sup>15</sup> General Division decision at para 36.