



[TRANSLATION]

Citation: *RM v Canada Employment Insurance Commission*, 2024 SST 128

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: R. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated
November 22, 2023(GE-23-2149)

Tribunal member: Pierre Lafontaine

Decision date: February 13, 2024

File number: AD-23-1135

Decision

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

Overview

[2] The Applicant (Claimant) applied for Employment Insurance (EI) benefits on March 10, 2023. She asked the Respondent (Commission) to treat the initial application as though it was made earlier, on August 14, 2022.

[3] The Commission had decided that the Claimant did not have good cause for the delay because she had not shown that she acted as a reasonable person in her situation would have acted to fulfill her obligations and assert her rights under the *Employment Insurance Act* (EI Act). Among other things, the Claimant waited until late February 2023 to contact the Commission to find out about her rights and obligations. On reconsideration, the Commission upheld its initial decision. The Claimant appealed to the General Division.

[4] The General Division found that the Claimant never tried to contact the Commission between August 14, 2022, and late February 2023. It found that the Claimant chose to put her efforts toward her appeal with the private insurer, her work, and her studies. It found that she had no medical restrictions during the entire period, since she had been back to work since October 17, 2022. The General Division found that the Claimant had not shown that there were exceptional circumstances that would have prevented her from filing her initial application for sickness benefits earlier. It found that she did not have good cause for the delay throughout the entire period of the delay.

[5] I must 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.

[6] 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

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

Analysis

[8] 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.

[9] 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 her case; she must instead establish that the appeal has a reasonable chance of success. In other words, she must show that there is arguably a reviewable error based on which the appeal might succeed.

[10] 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?

[11] The Claimant says that her employer directed her to an appeal with her private insurer instead of providing her with a Record of Employment (ROE) to apply for sickness benefits. She worked, studied, and above all, had to rest and do exercises to

function normally. She acted quickly to assert her rights with government agencies who did not tell her about the option of applying for sickness benefits.

[12] The General Division found that the Claimant never tried to contact the Commission between August 14, 2022, and late February 2023. It found that she chose to put her efforts toward her appeal with the private insurer, her work, and her studies. It found that the Claimant had no medical restrictions during the entire period, since she had been back to work since October 17, 2022.

[13] I find from the evidence that the Claimant's communications with government agencies were mainly to ask about a possible appeal with the insurer.

[14] The General Division found that the Claimant had not shown that there were exceptional circumstances that would have prevented her from filing her initial application for sickness benefits earlier. It found that she did not have good cause for the delay throughout the entire period of the delay.

[15] It is well established that good faith and ignorance of the law are not in themselves good cause for the delay in applying for benefits.¹

[16] It is also well established that a claimant who delays applying for benefits because their employer failed to issue a ROE does not have good cause for the delay.²

[17] The General Division found that a reasonable and prudent person in the Claimant's situation would have contacted the Commission for more information, especially since the Claimant knew the Commission existed, since she had already applied for regular benefits. It found that the Claimant had not proven that she had good cause for the delay in applying for benefits throughout the entire period of the delay.

¹ *Albrecht*, A-172-85; *Larouche*, A-644-93; *Carry*, 2005 FCA 367; *Somwaru*, 2010 FCA 336; *Kaler*, 2011 FCA 266; *Mauchel*, 2012 FCA 202.

² *Canada (Attorney General) v Chan*, A-185-94; *Canada (Attorney General) v Brace*, 2008 FCA 118; *Canada (Attorney General) v Ouimet*, 2010 FCA 83.

[18] I see no reviewable error made by the General Division based on which the appeal might succeed.

[19] I must repeat that the Appeal Division is not permitted to make a different finding than the General Division on the same facts, given the extent of its jurisdiction and the absence of an error of law, a breach of natural justice, or capricious findings of fact.³

[20] The Claimant referred to an Appeal Division decision in support of her application for permission to appeal.⁴ But that decision does not apply in an antedate case.

[21] The decision in question concerns a delay in filing an application to appeal to the General Division, which involves another legal test. The Appeal Division found that a Commission agent told the Claimant that she could file her appeal late. For this reason, it gave the Claimant an extension of time to file her application to appeal to the General Division.

[22] After reviewing the appeal file, the General Division decision, and the Claimant's arguments in support of her request for permission to appeal, I find that the appeal has no reasonable chance of success. The Claimant has not raised any issue that could justify setting aside the decision under review.

Conclusion

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

Pierre Lafontaine
Member, Appeal Division

³ *Quadir v Canada (Attorney General)*, 2018 FCA 21.

⁴ AD-23-999.