



Citation: *PB v Canada Employment Insurance Commission*, 2023 SST 1431

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: P. B.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated August 17, 2023
(GE-23-1113)

Tribunal member: Solange Losier

Decision date: November 1, 2023

File number: AD-23-859

Decision

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

Overview

[2] P. B. is the Claimant in this case. He applied for Employment Insurance (EI) regular benefits on November 3, 2022, but asked that the application be antedated to an earlier date, December 1, 2021.

[3] The Canada Employment Insurance Commission (Commission) decided that the Claimant hadn't shown good cause for the delay, so it refused to antedate his EI claim to December 1, 2021.¹

[4] The General Division came to the same conclusion.² It decided that the Claimant hadn't shown good cause for the delay in applying for EI benefits. Because of that, his application couldn't be treated as though it was made on the earlier date.

[5] The Claimant is now asking for permission to appeal the General Division decision to the Appeal Division.³ He argues that the General Division made an error of fact. He says that he had good cause for the delay in applying for EI benefits, his circumstances were extraordinary and he acted as a reasonable and prudent person would have acted in similar circumstances. As well, he is an honest person and is dealing with financial hardship.

[6] I am denying the Claimant's request for permission to appeal because it has no reasonable chance of success.

Issue

[7] Is it arguable that the General Division based its decision on an important error of fact when it decided that the Claimant didn't have good cause to antedate his EI claim?

¹ See reconsideration decision at page GD3-29.

² See General Division decision at pages AD1A-1 to AD1A-6.

³ See application to the Appeal Division at pages AD1-1 to AD1-10.

Analysis

[8] An appeal can proceed only if the Appeal Division gives permission to appeal.⁴

[9] I must be satisfied that the Claimant's appeal has a reasonable chance of success.⁵ This means that there must be some arguable ground upon which the appeal might succeed.⁶

[10] The possible grounds of appeal to the Appeal Division are that the General Division:⁷

- proceeded in a way that was unfair
- acted beyond its powers or refused to exercise those powers
- made an error of law
- based its decision on an important error of fact

[11] An error of fact happens when the General Division has “based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it”.⁸ This means that I can intervene if the General Division based its decision on an important mistake about the facts of the case.

[12] This involves considering some of the following questions:⁹

- Does the evidence squarely contradict one of the General Division's key findings?
- Is there no evidence that could rationally support one of the General Division's key findings?
- Did the General Division overlook critical evidence that contradicts one of its key findings?

⁴ See subsection 56(1) of the *Department of Employment and Social Development (DESD Act)*.

⁵ See section 58(2) of the DESD Act.

⁶ See *Osaj v Canada (Attorney General)*, 2016 FC 115.

⁷ See section 58(1) of the DESD Act.

⁸ See section 58(1)(c) of the DESD Act.

⁹ This is a summary of the Federal Court of Appeal's decision in *Walls v Canada (Attorney General)*, 2022 FCA 47 at paragraph 41.

[13] Not all errors of fact will allow me to intervene. For example, if the General Division made a mistake about a minor fact in this case that does not impact the outcome of the case, then I can't intervene.

I am not giving the Claimant permission to appeal

- **There is no arguable case that the General Division based its decision on an important mistake about the facts of the case**

[14] The Claimant argues that the General Division made an error of fact. His application to the Appeal Division focused on the following main arguments.¹⁰ This is the summary of his main arguments:¹¹

- He had good cause for the delay in applying for EI benefits
- His circumstances were extraordinary and he acted as a reasonable and prudent person would have acted in similar circumstances
- He is an honest person and is dealing with financial hardship

[15] The General Division had to decide whether the Claimant could antedate his application for EI benefits from December 1, 2021 to November 3, 2022.¹²

[16] To do so, the Claimant had to show that he had “good cause” for filing his application for EI benefits late for the entire period of delay.¹³

[17] To establish good cause, the Claimant has to show that he did what a reasonable person in his situation would have done in similar circumstances to satisfy himself of his rights and obligations under the law.¹⁴ This includes an obligation to take reasonably prompt steps to determine if they qualified for EI benefits.

¹⁰ See pages AD1-7 to AD1-10.

¹¹ See pages AD1-7 to AD1-10.

¹² See reconsideration decision at page GD3-29.

¹³ See section 10(4) of the *Employment Insurance Act* (EI Act).

¹⁴ 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.

[18] There is no arguable case that the General Division based its decision on an important mistake about the facts of the case, so I am not giving the Claimant permission to appeal. My reasons are below.

[19] First, the Claimant's arguments to the Appeal Division are focused on restating the reasons he had good cause. He explains why he acted as a reasonable and prudent person would have acted in similar circumstances.

[20] Second, the General Division was aware of the Claimant's reasons for the delay in filing his application for EI benefits. However, it decided that his circumstances were not exceptional.¹⁵ It concluded that his reasons did not amount to good cause for the delay in filing his application for EI benefits.¹⁶

[21] However, the Appeal Division's role is limited to determining whether the General Division made a specific type of error.¹⁷ The Court says that the Appeal Division cannot intervene in order to settle a disagreement about the application of settled legal principles to the facts of a case.¹⁸ This means that I cannot intervene to reweigh the evidence in order to come to a different or more favourable conclusion for the Claimant.

[22] Neither the General Division nor Appeal Division has any authority to grant EI benefits for compassionate reasons including financial hardship.

[23] Aside from the Claimant's arguments, I also reviewed the file and examined the General Division decision.¹⁹ I did not find any evidence that the General Division might have ignored or misinterpreted. The Claimant's appeal has no reasonable chance of success.

¹⁵ See paragraphs 12 and 28 of the General Division decision.

¹⁶ See paragraph 26 of the General Division decision.

¹⁷ See section 58(1) of the DESD Act and *Marcia v Canada (Attorney General)*, 2016 FC 16 at paragraph 34.

¹⁸ See *Garvey v Canada (Attorney General)*, 2018 FCA 118 at paragraphs 7-11 and *Quadir v Canada (Attorney General)*, 2018 FCA 21 at paragraph 14.

¹⁹ The Federal Court has said that I should do this in decisions like *Griffin v Canada (Attorney General)*, 2016 FC 874 and *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

Conclusion

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

Solange Losier
Member, Appeal Division