



Citation: *IW v Canada Employment Insurance Commission*, 2023 SST 1696

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

# **Extension of Time and Leave to Appeal Decision**

**Applicant:** I. W.

**Respondent:** Canada Employment Insurance Commission

---

**Decision under appeal:** General Division decision dated July 21, 2023  
(GE-23-1157)

---

**Tribunal member:** Pierre Lafontaine

**Decision date:** November 28, 2023

**File number:** AD-23-890

## Decision

[1] An extension of time to file the application for leave to appeal is granted. Leave to appeal is refused. This means the appeal will not proceed.

## Overview

[2] The Applicant (Claimant) was notified that the Respondent (Commission) was unable to pay her the Employment Insurance benefits she requested. Specifically, she needed 420 hours of insurable employment to qualify during her qualifying period between December 13, 2020, and December 11, 2021, but she had only 151 hours of insurable employment.

[3] The Claimant asked that her application be antedated to an earlier date. The Commission refused to antedate her claim. It says she doesn't have good cause for not applying for benefits sooner. The Claimant appealed the reconsideration decision to the General Division.

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

[5] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. She submits that she still hasn't received her *Record of Employment* (ROE) from her employer. She puts forward that the employer should be held accountable for not following the law. She submits that she has paid for 50 years in the program and should be allowed to receive benefits.

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

[7] I am granting the extension of time. However, I am refusing leave to appeal because the Claimant's appeal has no reasonable chance of success.

## Issues

[8] Is the Claimant's application late? Should I allow an extension of time?

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

## Analysis

[10] 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.

[11] 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 her 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.

[12] 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.

### **Is the Claimant's application late? Should I allow an extension of time?**

[13] Yes, the application is late. The General Division was rendered on July 21, 2023. The Claimant filed her application for leave to appeal on October 6, 2023.

[14] I am granting the Claimant an extension of time because she indicated to the Tribunal her desire to appeal the General Division decision within 30 days. The Tribunal sent her the application form on September 20, 2023. She filed her appeal application on October 6, 2023.

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

[15] The Claimant submits that she still hasn't received her ROE from her employer. She puts forward that the employer should be held accountable for not following the law. She submits that she has paid for 50 years in the program and should be allowed to receive benefits.

[16] 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.<sup>1</sup>

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

[18] 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 benefits.<sup>2</sup>

[19] As stated by the General Division, a delay in applying for EI benefits based on an incorrect and unverified assumption that a claimant would not be eligible, or waiting for an employer to issue a ROE, does not constitute good cause for purposes of the EI Act.<sup>3</sup>

---

<sup>1</sup> Section 10(4) of the *Employment Insurance Act* (EI Act).

<sup>2</sup> *Albrecht*, A-172-85, *Larouche*, A-644-93, *Carry*, 2005 FCA 367, *Somwaru*, 2010 FCA 336, *Kaler*, 2011 FCA 266, *Mauchel*, 2012 FCA 202.

<sup>3</sup> *Howard v Canada (Attorney general)*, 2011 FCA 116, *Canada (Attorney general) v Innes*, 2010 FCA 341, *Shebib v Canada (Attorney general)*, 2003 FCA 88.

[20] The Claimant had a duty to act promptly to inquire with the Commission about her eligibility to EI benefits, especially when considering how her job with the employer ended after 43 years of service.

[21] The fact that the Claimant feels she was mistreated and discriminated against by her employer does not alter its conclusion that she did not meet the conditions for her application to be antedated. It's for other forums (in other words, other courts, or tribunals) to decide whether she has a claim against her employer.

[22] I see no reviewable error made by the General Division on the issue of antedate. The decision is based on the evidence presented before it and contains no error in law.

[23] 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.<sup>4</sup>

[24] After reviewing the appeal file and the General Division's decision as well as considering the Claimant's arguments in support of her 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**

[25] An extension of time to file the application for leave to appeal is granted. Leave to appeal is refused. This means the appeal will not proceed.

Pierre Lafontaine  
Member, Appeal Division

---

<sup>4</sup> *Quadir c Canada (Attorney General)*, 2018 CAF 21.