



Citation: *TB v Canada Employment Insurance Commission*, 2023 SST 1727

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

# **Leave to Appeal Decision**

**Applicant:** T. B.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated September 1, 2023  
(GE-23-1488)

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**Tribunal member:** Pierre Lafontaine

**Decision date:** November 30, 2023

**File number:** AD-23-902

## Decision

[1] Leave to appeal is refused. This means the appeal will not proceed.

## Overview

[2] The Applicant (Claimant) was paid EI benefits while he attended school starting in September 2021. The next year, the Respondent (Commission) decided the Claimant wasn't available for work. It asked the Claimant to repay the benefits he had already received. In June 2022, the Commission sent the Claimant a letter notifying him of the decision.

[3] Then, in April 2023, the Claimant asked the Commission to reconsider its initial decision. The Commission decided the reconsideration request was late. It refused to accept the Claimant's late reconsideration request. The Claimant appealed the decision to the General Division.

[4] The General Division determined that the Claimant was late in requesting reconsideration of the decision of June 17, 2022. It found that the Claimant had received the decision and had applied for reconsideration more than 30 days after it was communicated to him.

[5] The General Division found that the Commission used the correct parts of the law to look at the Claimant's request. It considered every factor and circumstance the Claimant brought up. It didn't rely on irrelevant or unimportant factors. The General Division found that the Commission did not act in a way that was discriminatory or in bad faith. It concluded that the Commission used its discretion fairly when it refused to accept the Claimant's late reconsideration request and that it could not interfere with the Commission's decision.

[6] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. He submits that the General Division decision was based on documents and deadlines but did not consider the main factor of how he was wrongfully

approved for EI benefits after honestly providing all needed information in his original application. The Claimant feels he is being punished for the mistake made by Service Canada when he gave them all the information about being a full-time student. He was still paid EI benefits which he later found out that he should have never received.

[7] I must decide whether there is some reviewable error of the General Division upon which the appeal might succeed.

[8] I refuse leave to appeal because the Claimant's appeal has no reasonable chance of success.

## **Issue**

[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:

- (a) the General Division: failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- (c) the General Division based its decision on an erroneous finding of fact that it had made in a perverse or capricious manner or without regard for the material before it.

[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 his 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.

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

[13] The Claimant submits that the General Division decision was based on documents and deadlines but did not consider the main factor of how he was wrongfully approved for EI benefits after honestly providing all needed information in his original application. The Claimant feels he is being punished for the mistake made by Service Canada when he gave them all the information about being a full-time student. He was still paid EI benefits which he later found out that he should have never received.

**Issue before the General Division**

[14] The Commission's decision dated May 1, 2023, indicates that the Claimant is late in requesting reconsideration of its initial decision of June 17, 2022, on his availability to work while attending school and that his explanation for being late did not meet the requirements of *Reconsideration Request Regulations*. Therefore, the initial decision on availability to work while in school will not be reconsidered.<sup>1</sup>

[15] In his application to appeal to the General Division, the Claimant indicates that he is appealing said late reconsideration decision communicated to him on May 1, 2023.<sup>2</sup>

[16] I note that the Commission's written representations to the General Division filed on June 2, 2023, two months before the hearing, indicate that the issue of availability to

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<sup>1</sup> See GD3-39.

<sup>2</sup> See GD2-4.

work while attending school is not an issue before the General Division. Only its decision to deny the late request for reconsideration.<sup>3</sup>

[17] I see no reviewable error made by the General Division when it did not address in its decision, the issue of availability to work while in school under the *Employment Insurance Act*. As stated by the General Division, while the Claimant's disclosure of his school attendance may be relevant to his availability to work while in school, it is not relevant to the Commission's decision to refuse his late reconsideration request.

[18] By law, the General Division could only hear the appeal of the Commission's May 1, 2023, decision denying the Claimant further time to make a request for reconsideration.<sup>4</sup> It could not consider the issue of availability to work while in school.

[19] This ground of appeal has no reasonable chance of success.

### **The late application**

[20] The General Division had to decide whether the Commission exercised its discretion in a judicial manner when it denied the Claimant's request to extend the 30-day reconsideration period.<sup>5</sup>

[21] The Claimant acknowledged that he did receive the initial decision letter dated June 17, 2022. He filed his reconsideration request on April 6, 2023, more than nine months after the Commission communicated to him its initial decision. The General Division found that the Claimant submitted his reconsideration request late.

[22] The General Division correctly indicated that the Commission may allow a longer period to make a request for reconsideration of a decision if the Commission is satisfied that there is a reasonable explanation for requesting a longer period and the person has demonstrated a continuing intention to request a reconsideration.<sup>6</sup>

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<sup>3</sup> See GD4-1

<sup>4</sup> Section 113 of the *Employment Insurance Act*.

<sup>5</sup> Section 112 of the *Employment Insurance Act*.

<sup>6</sup> See article 1(1) of the *Reconsideration Request Regulations*.

[23] The General Division correctly stated that when the Commission refuses a late request for reconsideration, it must show that it used its discretionary powers properly.<sup>7</sup>

[24] The General Division considered that the Claimant delayed over nine months before requesting a reconsideration because he was trying to figure the decision on his own, with the help of friends and other students. He acknowledged that he did not contact the Commission between the date the initial decision was made and when he asked for reconsideration. He eventually contacted his MP's, who advised him to ask for a reconsideration.

[25] The General Division found that the Commission considered relevant factors and that it did not consider irrelevant factors. The General Division found that there was no evidence that the Commission acted improperly or in bad faith since it followed the test set out in the law that applies to the length of the Claimant's delay.

[26] The General Division concluded that the Commission had properly exercised its discretion when it determined that the Claimant did not have a reasonable explanation for the delay in making the request for reconsideration and that he did not demonstrate a continuing intention to request the reconsideration. It therefore had no power to change the late decision.

[27] I see no reviewable error made by the General Division. It properly applied the facts to the law in coming to the decision that the Commission acted in a judicial manner when it refused to extend the 30-day reconsideration period.

### **Final disposition**

[28] In his application for leave to appeal, the Claimant has not identified any reviewable errors such as jurisdiction or any failure by the General Division to observe a principle of natural justice. He has not identified errors in law nor identified any erroneous findings of fact which the General Division may have made in a perverse or capricious manner or without regard for the material before it.

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<sup>7</sup> See *Canada (Attorney General) v Gagnon*, 2004 FCA 351.

[29] For the above-mentioned reasons and after reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Claimant in support of his request for leave to appeal, I find that the appeal has no reasonable chance of success.

## **Conclusion**

[30] Leave to appeal is refused. This means the appeal will not proceed.

Pierre Lafontaine  
Member, Appeal Division