



Citation: *JC v Canada Employment Insurance Commission*, 2023 SST 1750

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: J. C.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated August 17, 2023
(GE-23-979)

Tribunal member: Melanie Petrunia

Decision date: December 5, 2023

File number: AD-23-820

Decision

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

Overview

[2] The Applicant, J. C. (Claimant) applied for employment insurance (EI) benefits on April 22, 2022, but asked that the application be treated as though it was made earlier.

[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 and failed to provide a fair process.

[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?¹

[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).²

[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;³ or
- d) made an error in law.⁴

[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.⁵

¹ 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.

² DESD Act, s 58(2).

³ 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.

⁴ This paraphrases the grounds of appeal.

⁵ *Karadeolian v Canada (Attorney General)*, 2016 FC 615; *Joseph v Canada (Attorney General)*, 2017 FC 391.

– **The General Division decision**

[12] The Claimant had previously appealed another General Division decision to the Appeal Division. In that decision, the General Division had considered whether the Claimant could antedate (or backdate) his April 22, 2022, claim to March 20, 2020. It found that the Claimant did not have good cause for the delay and his claim could not be antedated to March 20, 2020.⁶

[13] The Claimant's appeal was allowed. The Appeal Division found that the General Division had considered the wrong section of the EI Act because regular EI benefits were not available from March 15 to September 26, 2020.⁷

[14] The matter was returned to the General Division to consider whether the April 2022 claim could be antedated to September 27 or October 3, 2020, when regular EI benefits were available.⁸ The General Division had to decide whether the Claimant had to shown "good cause" for filing his application for EI benefits late for the entire period of the delay.⁹

[15] 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.¹⁰ This includes an obligation to take reasonably prompt steps to determine if they qualify for benefits.

[16] The Claimant applied for Canada Emergency Response Benefits (CERB) when he lost his job in March 2020. When the CRB ended, he applied for and received the Canada Recovery Benefit (CRB).¹¹

[17] The CRB Act says that you must repay an amount equal to 50% of your income over \$38,000, up to the total amount of CRB received. The Claimant was advised by his

⁶ AD1A

⁷ Appeal Division decision dated March 15, 2023 in AD-22-892 and AD-22-893

⁸ Appeal Division decision at para 1.

⁹ See section 10(4) of the *Employment Insurance Act* (EI Act).

¹⁰ See *Canada (Attorney General) v Kaler*, 2011 FCA 266 at paragraph 4 and *Canada (Attorney General) v Somwaru*, 2010 FCA 336 at paragraphs 15 and 16.

¹¹ General Division decision at para 24.

accountant in April 2022 that he would have to repay some or all of the CRB that he received.¹² He contacted Service Canada and asked to receive EI benefits instead of the CERB and CRB that he received. He filed an application for EI benefits in April 2022.¹³

[18] The General Division looked at whether the Claimant had good cause for the delay in applying for benefits for the period from September 27 or October 3, 2020 to April 2022.

[19] The General Division found that the Claimant did not prove that he had good cause for the delay in applying for benefits. It found that a reasonable and careful person, in the Claimant's circumstances, would have investigated EI benefits before applying for CRB.¹⁴

[20] The General Division also found that a reasonable and prudent person would have contacted Service Canada to determine if there were any differences between the benefit programs and whether one suited him better.¹⁵

[21] In his application for leave to appeal, the Claimant argues that the General Division made three errors:

- a) It did not understand the implications of his ADHD disability and its impact;
- b) It erred by not accepting that he had good cause for delay because he was in a program that took the place of EI (CERB), therefore there was no delay; and
- c) The General Division did not address all of the issues cited by the Appeal Division when it decided to send his matter back.¹⁶

¹² General Division decision at para 25.

¹³ General Division decision at para 27.

¹⁴ General Division decision at para 88.

¹⁵ General Division decision at para 89.

¹⁶ ADN1-2

No arguable case that the General Division erred

[22] In its decision, the General Division discussed the Claimant's evidence that he has ADHD and cognitive decline.¹⁷ He said that his condition causes him anxiety and makes it difficult for him to question authority.¹⁸

[23] The Claimant said that he contacted EI when he lost his job but could not get through. He then contacted the CRA and was told both the EI-ERB and the CERB would pay about the same amount, so he should just apply through CRA. He was relieved and felt no need to question the CRA agent.¹⁹

[24] The Claimant told the General Division that he did not think to look into another program when the CERB ended as he was already on a path.²⁰ He believes that he applied for the CRB over the phone.²¹

[25] The General Division accepted the Claimant's evidence concerning his ADHD and cognitive decline. It acknowledged that these conditions cause him anxiety, that he is not good with computers and was not an expert on the benefit programs offered by the government at the time.²² However, it found that these factors did not give the Claimant good cause for delay.²³

[26] The General Division found that the Claimant was aware that there were two benefit programs, one being administered by the CRA and one through EI. It found that the Claimant could have looked into EI benefits when his CERB ended but chose not to.²⁴

¹⁷ General Division decision at paras 42 to 64.

¹⁸ General Division decision at para 43.

¹⁹ General Division decision at paras 44 and 45.

²⁰ General Division decision at para 47.

²¹ General Division decision at para 46.

²² General Division decision at para 51.

²³ General Division decision at para 54.

²⁴ General Division decision at para 56.

[27] The General Division understood the Claimant's argument that his anxiety led him to want to remain on the same benefit path he had been on. However, it found that he was not prevented from inquiring about EI benefits when his CERB ended.²⁵

[28] I find that there is no arguable case that the General Division failed to consider the Claimant's ADHD and his evidence about the impacts of this condition. The General Division acknowledged and accepted the Claimant's evidence but did not accept that he had good cause for delay, despite his condition. The General Division considered and weighed the evidence when making its finding.

[29] Similarly, the General Division discussed the Claimant's argument that he was in a benefit program that replaced EI and therefore there was no delay.²⁶ The General Division took the Claimant's arguments into consideration but disagreed with the Claimant's position that there was no delay.²⁷

[30] The General Division explained why it disagreed with the Claimant, found that there was a delay and that being enrolled in the CERB or CRB programs did not amount to good cause for delay.

[31] There is no arguable case that the General Division failed to consider the Claimant's arguments or evidence concerning his enrollment in the CERB and CRB program amounting to there being no delay or having good cause for delay.

[32] The General Division addressed all of the Claimant's arguments. The Appeal Division decision sending the matter back directed that the General Division decide whether the Claimant's application could be backdated to September 27 or October 3, 2020. The General Division decided that the Claimant could not antedate his claim.

[33] The Appeal Division did not address the other errors that the Claimant argues the previous General Division member made. It stated that the Claimant would have an

²⁵ General Division decision at para 57.

²⁶ General Division decision at paras 35 to 37.

²⁷ General Division decision at para 38.

opportunity to lead evidence and make arguments at the new General Division hearing, which he did.²⁸

[34] There is no arguable case that the General Division did not address all of the issues raised by the Appeal Division.

[35] I find that the Claimant's arguments do not have a reasonable chance of success. The General Division considered all of the Claimant's evidence and arguments when making its decision.

[36] 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.²⁹

[37] 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.

[38] 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.

[39] 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

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

Melanie Petrunia
Member, Appeal Division

²⁸ Appeal Division decision at para 16.

²⁹ General Division decision at para 90.