Citation: *AA v Canada Employment Insurance Commission*, 2023 SST 1751

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	A. A.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated October 23, 2023 (GE-23-2362)

Tribunal member:	Pierre Lafontaine
Decision date:	December 5, 2023
File number:	AD-23-981

Decision

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

Overview

[2] The Applicant (Claimant) applied for Employment Insurance (EI) benefits on February 14, 2023. She asked that her application be antedated to March 8, 2022. 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.

[3] 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.

[4] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. She submits that the General Division did not consider the evidence before it.

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

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

Issue

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

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 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.

[9] 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.

[10] 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 succeed?

[11] The Claimant submits that her rights as a human and as an employee were violated. Any reasonable person has the right to know the reason for dismissal to understand whether they can claim benefits. The Claimant submits that the employer did not issue a *Record of Employment* (ROE) after the dismissal. This made her doubt her entitlement to benefits and forced her to contact the *Ontario Labour Relations Board* to find out the reason for her dismissal. It was only after she applied for EI benefits in February 2023 that she learned she had the right to claim EI benefits without

knowing the reason of her termination. She feels her testimony was not entirely understood or considered by the General Division.

[12] 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.[1]

[13] Based on the evidence, the General Division found that the Claimant did not prove good cause for the entire period because she did not act as a reasonable and prudent person would have done in similar circumstances.

[14] The General Division considered that the Claimant initially stated that she had received a letter from her union representative shortly after being dismissed advising her she could apply for EI.[2] The Claimant stated she did not apply because she believed she needed to prove she had been wrongfully dismissed by her employer before applying for EI benefits. However, she never verified her personal belief with the Commission.[3] The General Division concluded that the antedate request could not be granted.

[15] 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 EI benefits.[4]

[16] 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.[5]

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[1] Section 10(4) of the *Employment Insurance Act* (EI Act).
[2] See GD3-21.
[3] See GD3-27.
[4] *Albrecht*, A-172-85, *Larouche*, A-644-93, *Carry*, 2005 FCA 367, *Somwaru*, 2010 FCA 336, *Kaler*, 2011 FCA 266, *Mauchel*, 2012 FCA 202.
[5] *Howard v Canada (Attorney general)*, 2011 FCA 116, *Canada (Attorney general) v Innes*, 2010 FCA 341, *Shebib v Canada (Attorney general)*, 2003 FCA 88.

[17] The Claimant had a duty to act promptly to inquire with the Commission about her eligibility to EI benefits, and not wait 11 months after her dismissal. This is especially true when considering that the Claimant strongly believed she had lost her job for a fictitious reason and that she had received information from her union that she could apply for EI benefits as soon as April 2022.

[18] The fact that the Claimant feels she was mistreated by her employer does not alter the General Division's 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 regarding her dismissal.

[19] 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.

[20] 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.[6]

[21] 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

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

Pierre Lafontaine
Member, Appeal Division

[6] *Quadir c Canada (Attorney General)*, 2018 CAF 21.