



Citation: *RG v Canada Employment Insurance Commission*, 2024 SST 34

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: R. G.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated October 5, 2023
(GE-23-1754)

Tribunal member: Solange Losier

Decision date: January 10, 2024

File number: AD-23-956

Decision

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

Overview

[2] R. G. is the Claimant in this case. He applied for Employment Insurance (EI) regular benefits on August 2, 2022 and asked the Commission to backdate his EI claim to an earlier date, December 21, 2017 (this is called antedating your claim).

[3] The Canada Employment Insurance Commission (Commission) denied the Claimant's request to antedate his EI claim because he didn't have good cause for the delay in applying.¹

[4] The General Division came to the same conclusion.² It said that the Claimant had not shown good cause to antedate his EI claim to December 21, 2017.

[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 important error of fact because it ignored a decision from the Canada Umpire Benefits (CUB) and that resulted in an unfair decision.

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

Issue

[7] Is there an arguable case that the General Division made an important error of fact or error of law by ignoring CUB 17192?

¹ See reconsideration decision at page GD3-36.

² See General Division decision at pages AD1A-1 to AD1A-9.

³ See Application to the Appeal Division at pages AD1-1 to AD1-12.

Analysis

[8] An appeal can proceed only if the Appeal Division gives permission to appeal.⁴ I must be satisfied that the appeal has a reasonable chance of success.⁵ There must be some arguable ground that the appeal might succeed.⁶

[9] 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.

[10] This means that for the Claimant's appeal to proceed, I have to find that there is a reasonable chance of success on one of the above grounds of appeal.

[11] The Claimant argues that the General Division made an important error of fact because it ignored a CUB decision. I think this allegation is better characterized as an error of law since he is saying that a CUB decision was ignored. So, I have considered whether the General Division made an error of law.

[12] An error of law can happen when the General Division ignores relevant case law, or does not apply the correct law, or uses the correct law but misunderstands what it means or how to apply it.⁸

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

⁵ See section 58(2) of the DESD Act.

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

⁷ The relevant errors are formally known as "grounds of appeal". They are listed under section 58(1) of the DESD Act. These errors are also explained on the Application to the Appeal Division, see page AD1-5.

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

I am not giving the Claimant permission to appeal

– There is no arguable case that the General Division ignored CUB 17192 decision

[13] The Claimant says that the General Division ignored a CUB decision and because of that, it resulted in an unfair decision.

[14] Specifically, the Claimant referred to the following paragraphs from CUB 17192 that he says apply to his case:

Nothing is to be gained by denying benefits to people who would otherwise be entitled on the mere technical grounds that they have not filed at the right time. It is with that reason in mind that Parliament has enacted the antedating provisions....

Now, if a claimant has other valid reasons which May happen to include ignorance of his entitlement to benefits, he will still enjoy the benefit of the antedating provisions so long as he can demonstrate that he has acted in a reasonable manner to satisfy himself as to his rights and obligations under the Act.

[15] The General Division did not ignore the CUB 17192 decision. It found that it was factually different from the Claimant's appeal.⁹ Because of that, it decided that the CUB decision was not relevant.

[16] It explained how the facts in the CUB 17192 decision were different from the Claimant's case.¹⁰ Specifically, it said that the delay period in that case was five weeks, and for the Claimant, his delay was five years. It said that the claimant in the CUB decision had made efforts to visit an unemployment insurance office during the period of delay and spoke to a counsellor, so he made a reasonable attempt to obtain information.

[17] The General Division has to follow decisions from the Federal Court of Appeal (Court), but it is not required to follow a CUB decision. The General Division can be persuaded by a CUB decision, but in this case it was not persuaded by it and explained why.

⁹ See paragraphs 32-34 of the General Division decision.

¹⁰ See paragraph 33 of the General Division decision.

[18] In its decision, the General Division referred to and relied on relevant Court decisions about antedate cases. It said that the Claimant had to show he took reasonably prompt steps to understand his entitlement to EI benefits and obligations under the law.¹¹ It further explained that if the Claimant didn't take these steps, then he must show that there were exceptional circumstances that explain why he didn't do so.¹²

[19] The General Division correctly stated and applied the law in its decision.¹³ It identified the applicable section of the *Employment Insurance Act* (EI Act) that says in order to have your application antedated, you have to prove that you had good cause for the entire period of delay and that you qualified for EI benefits on the earlier date.

[20] I acknowledge that the Claimant disagrees with the General Division's decision and finds that it was unfair. However, I cannot reweigh the evidence in order to come to a different conclusion for the Claimant. The Appeal Division has a limited role, so I cannot intervene in order to reweigh the evidence about the application of settled legal principles to the facts of the case.¹⁴

[21] As a result, there is no arguable case that the General Division made an error of law.

– **There are no other reasons for giving the Claimant permission to appeal**

[22] I reviewed the file, examined the decision under appeal and did not find any key evidence that the General Division might have ignored or misinterpreted.¹⁵

¹¹ See paragraph 14 of the General Division decision and *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

¹² See paragraph 14 of the General Division decision.

¹³ See paragraph 10 of the General Division decision.

¹⁴ See *Garvey v Canada (Attorney General)*, 2018 FCA 118.

¹⁵ See *Karadeolian v Canada (Attorney General)*, 2016 FC 615, which recommends doing such a review.

Conclusion

[23] This appeal does not have a reasonable chance of success. For that reason, permission to appeal is refused.

[24] This means that the appeal will not proceed.

Solange Losier
Member, Appeal Division