Citation: *TB v Canada Employment Insurance Commission*, 2024 SST 3

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	T. B.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated September 7, 2023 (GE-23-1872)

Tribunal member:	Pierre Lafontaine
Decision date:	January 2, 2024
File number:	AD-23-930

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 March 19, 2023. She asked that her application be antedated to June 19, 2022.

[3]   The Respondent (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 did not know that she qualified. If she had known, she would have applied sooner.

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

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

Issue

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

Analysis

[9]   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.

[10]   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.

[11]   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?

[12]   The Claimant submits that she did not know that she qualified. If she had known, she would have applied sooner.

[13]   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]

[14]   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. It considered that the Claimant's last day with her employer was on June 17, 2022. The Claimant said she thought she need her *Record of Employment* (ROE) to apply. However, she never verified her personal belief with the Commission. She only applied to EI because she was told that she had to apply before she would be eligible to receive *Ontario Works*. 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.[2]

[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 *Employment Insurance Act*.[3]

[17]   The Claimant had a duty to act promptly to inquire with the Commission about her eligibility to EI benefits, and not wait eight months after the end of her employment. This is especially true when considering that the Claimant wasn't working or getting any placements from the employer after June 17, 2022.

[18]   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.

---

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

[19]   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.[4]

[20]   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

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

Pierre Lafontaine
Member, Appeal Division

---

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