



Citation: *BK v Canada Employment Insurance Commission*, 2024 SST 13

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

# **Leave to Appeal Decision**

**Applicant:** B. K.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated September 21, 2023  
(GE-23-1763)

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**Tribunal member:** Stephen Bergen

**Decision date:** January 4, 2024

**File number:** AD-23-924

## Decision

[1] I am refusing leave (permission) to appeal. The appeal will not proceed.

## Overview

[2] B. K. is the Applicant. His appeal is about his claim for Employment Insurance (EI) benefits, so I will call him the Claimant. The Respondent, the Canada Employment Insurance Commission (Commission), disqualified the Claimant from receiving benefits because his employer had terminated him for misconduct. In a separate decision dated April 13, 2022, the Commission also disentitled him to benefits because it found he was not available for work.

[3] The Claimant asked the Commission to reconsider its decision on his availability. However, he told the Commission he did not want to collect and provide proof of his availability because he would still be disqualified by the “misconduct” decision. As a result, the Commission maintained its decision on the Claimant’s availability verbally in a letter dated April 13, 2022.

[4] The Claimant did not appeal the Commission’s reconsideration decision to the General Division until June 26, 2023. The General Division decided that the Claimant’s appeal was out of time and that it could not proceed.

[5] The Claimant is applying to the Appeal Division for leave to appeal.

[6] I am refusing leave to appeal. The Claimant has not made out an arguable case that the General Division made an error that would permit me to intervene.

## Issue

[7] Did the General Division make an important error of fact by failing to consider that he had been waiting for a decision on his appeal of the misconduct decision?

## **I am not granting the Claimant leave to appeal**

[8] For the Claimant's application for leave to appeal to succeed, his reasons for appealing would have to fit within the "grounds of appeal." To grant this application for leave and permit the appeal process to move forward, I must find that there is a reasonable chance of success on one or more grounds of appeal.

[9] The grounds of appeal identify the kinds of errors that I can consider. I may consider only the following errors:

- a) The General Division hearing process was not fair in some way.
- b) 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 (error of jurisdiction).
- c) The General Division based its decision on an important error of fact.
- d) The General Division made an error of law when making its decision.<sup>1</sup>

[10] The Courts have equated a reasonable chance of success to an "arguable case."<sup>2</sup>

### **Error of fact**

[11] The Claimant argues that the General Division made an important error of fact because it failed to consider the extenuating circumstances that caused him to delay his appeal.

[12] There is no arguable case that the General Division made an error by not considering his extenuating circumstances.

[13] The Claimant has not suggested that the General Division ignored or misunderstood any evidence that affected how it calculated the delay between when he

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<sup>1</sup> This is a plain-language version of the grounds of appeal. The full text is in section 58(1) of the *Department of Employment and Social Development Act* (DESDA).

<sup>2</sup> See *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; and *Ingram v Canada (Attorney General)*, 2017 FC 259.

received the reconsideration decision and when he filed his appeal. He does not dispute that he filed his appeal more than a year from the date he received the decision.

[14] As the General Division decision correctly identified, the *Department of Employment and Social Development Act* (DESDA) states that a Claimant may not bring an appeal that is more than a year late under any circumstances.<sup>3</sup>

[15] Once an appeal is more than a year late, the General Division has no discretion to allow the appeal to proceed. Other decisions of the Federal Court have confirmed this.<sup>4</sup>

[16] This means that the Claimant's reasons for the delay are irrelevant to the General Division decision, no matter how compelling they may be. There is no arguable case that the General Division made an error by not considering evidence that is not relevant to its decision.

[17] The Claimant has no reasonable chance of success.

## **Conclusion**

[18] I am refusing leave to appeal. This means that the appeal will not proceed.

Stephen Bergen  
Member, Appeal Division

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<sup>3</sup> See para 2 of the General Division decision.

<sup>4</sup> See *Smith v. Canada (Attorney General)*, 2020 FC 1192, *Pelletieri v Canada (Attorney General)*; 2019 FC 1585.