



Citation: *JP v Canada Employment Insurance Commission*, 2024 SST 37

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant:	J. P.
Representative:	K. H.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated October 13, 2023 (GE-23-2237)
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Tribunal member:	Stephen Bergen
Decision date:	January 11, 2024
File number:	AD-23-1002

Decision

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

Overview

[2] Jonathan Pelletier is the Applicant. I will call him the Claimant because his application is about his claim for Employment Insurance (EI) benefits.

[3] The Respondent, the Canada Employment Insurance Commission (Commission), paid the Claimant benefits under the Employment Insurance Emergency Response Benefits program (EI-ERB). Under this program, claimants were entitled to a \$500.00 weekly benefit if they met the requirements. To get support to claimants quickly, the law authorized the Commission to immediately prepay benefits.¹ The Commission advanced claimants \$2,000.00 of the EI-ERB benefits to which they would be eligible in later weeks. The Commission expected to recover the advance by withholding payment of the EI-ERB benefit in some of those weeks.

[4] The Claimant received this \$2,000.00 advance, but he did not file any benefit claims. About two years later, the Commission told the Claimant that he would have to pay the \$2,000.00 advance. The Claimant asked the Commission to reconsider but the Commission refused to do so because the Claimant's request was late.

[5] The Claimant appealed the refusal to reconsider to the General Division of the Social Security Tribunal. The General Division dismissed the appeal. It decided that the Claimant had neither a reasonable explanation for his delay nor a continuing intention to appeal.

[6] The Claimant is now asking the Appeal Division for leave to appeal the General Division decision.

¹ See 153.7(1.1) of the *Employment Insurance Act* (EI Act).

[7] I am refusing leave to appeal. The Claimant has not made out an arguable case that the General Division made an error of law.

Analysis

General Principles

[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." The grounds of appeal identify the kinds of errors that I can consider.

[9] 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.²

[10] To grant this application for leave and permit the appeal process to move forward, I must find that the Claimant has a reasonable chance of success on one or more grounds of appeal. Other court decisions have equated a reasonable chance of success to an "arguable case."³

Issues

[11] Is there an arguable case that the General Division made an error of law by applying a legal test that did not recognize the Covid context?

[12] Is there an arguable case that the General Division made an important error of fact by not considering how the Covid context affected his delay?

² 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).

³ See *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; and *Ingram v Canada (Attorney General)*, 2017 FC 259.

Error of law

[13] There is no arguable case that the General Division made an error of law. The legal test to assess late reconsideration requests did not change to accommodate the Covid context.

[14] The law states that a claimant may request a reconsideration within 30 days of the day that they received the decision.⁴ The Commission does not have to accept a late reconsideration request. This is a discretionary decision so it may only be reversed if the Commission exercises its discretion “non-judicially.” A non-judicial decision includes any decision where the Commission

- a) fails to consider all the relevant factors or considers factors which are not relevant;
- b) makes its decision in a discriminatory manner;
- c) acts in bad faith; or
- d) acts with an improper purpose or motive.⁵

[15] Where a claimant requests a reconsideration more than 30 days from the date it was communicated, but still within a year, there are only two factors that are relevant to the Commission’s decision. The Commission must be satisfied that the claimant has a reasonable explanation for requesting a longer period. It must also be satisfied that the claimant has demonstrated a continuing intention to request a reconsideration.⁶

[16] The General Division decided that the Commission ignored certain evidence that was relevant to these two factors. Therefore, it found that the Commission did not exercise its discretion judicially.

[17] Because of this finding, the General Division gave the decision that the Commission should have given. It decided that the Claimant had neither a reasonable explanation for the delay nor a continuing intention to seek a reconsideration. While it

⁴ See section 112 of the EI Act.

⁵ See *Canada (Attorney General) v Purcell*, [1996] 1 FCR 644.

⁶ See section 1(1) of the *Reconsideration Request Regulations*.

acknowledged that the Claimant's Attention Deficit Disorder (ADD) was relevant, it did not accept that this was a sufficient explanation.

[18] The General Division properly considered whether the Commission had exercised its discretion properly. When it found that it had not, the General Division applied the correct test to decide whether the reconsideration request should be considered.

Important Error of Fact

[19] There is no arguable case that the General Division made an error of fact.

[20] The Claimant appears to be concerned that the General Division did not consider the Covid context or that the Covid outbreak affected the Commission's service standards, the ability of claimants to meet deadlines, or how claimants perceived the importance of deadlines. These seem to be concerns with the effects of Covid on the general population.

[21] However, the General Division did not need to expressly analyse the effect of Covid. The underlying issue was the repayment of the EI-ERB benefit. This benefit was created to address difficulties that arose because of Covid and its effect on employment. The General Division may be presumed to be aware that the Claimant's delay occurred within the context of the Covid outbreak.

[22] The General Division thoroughly reviewed evidence that was relevant to its decision. This included the evidence that the Claimant had ADD. It also included evidence that he had a representative who had acted as his agent throughout the process.

[23] The Claimant did not point to any error in the General Division's findings or identify important evidence that it ignored. The General Division's conclusions appear to follow rationally from its findings of fact.

[24] The Claimant may feel that the General Division did not give enough weight to how the Covid context affected his delay. This is not something that I can address. The

Claimant may not like how the General Division weighed the evidence and may disagree with its conclusions, but the General Division is the trier of fact. It is not the Appeal Division's job to re-weigh or re-evaluate the evidence.⁷

[25] I recognize that the Claimant's representative is not a lawyer or professional advocate. She may not have clearly understood how to identify potential errors in the General Division decision. As a result, I have followed the lead of the courts and searched the General Division record for an arguable case that it may have misunderstood or ignored any other relevant evidence.⁸

[26] However, I have found nothing in the General Division record that would suggest that it misunderstood or ignored any relevant evidence.

[27] The Claimant's appeal has no reasonable chance of success.

Conclusion

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

Stephen Bergen
Member, Appeal Division

⁷See for example: *Hideq v Canada (Attorney General)*, 2017 FC 439, *Parchment v Canada (Attorney General)*, 2017 FC 354, *Johnson v Canada (Attorney General)*, 2016 FC 1254, *Marcia v Canada (Attorney General)*, 2016 FC 1367.

⁸ See the decision in *Karadeolian v. Canada (Attorney General)*, 2016 FC 615.