



Citation: *KH v Canada Employment Insurance Commission*, 2024 SST 185

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: K. H.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated December 1, 2023
(GE-23-2724)

Tribunal member: Stephen Bergen

Decision date: February 27, 2024

File number: AD-24-35

Decision

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

Overview

[2] K. H. is the Applicant. I will call her the Claimant because this application concerns her claim for Employment Insurance (EI) benefits.

[3] The Claimant filed her claim for EI benefits on September 29, 2021, but asked the Commission to treat her application as though it were made on May 16, 2021. (This is called “antedating.”) She explained that she had been unable to contact the Commission and that is why she delayed her application. She had lost her internet access and her phone card expired and she was too anxious about Covid to leave her apartment.

[4] The Commission refused to antedate her claim. It did not accept that she had good cause for the delay. When the Claimant asked it to reconsider, it would not change her decision.

[5] The Claimant appealed to the General Division of the Social Security Tribunal, but the General Division dismissed her claim. Now she is asking for permission to appeal to the Appeal Division.

[6] I am refusing permission to appeal. The Claimant has not made out an arguable case that the General Division acted unfairly or made an important error of fact.

Issues

[7] Is there an arguable case that the General Division member’s conduct demonstrated bias or prevented the Claimant from making her case?

[8] Is there an arguable case that the General Division’s reasons were so inadequate as to be an error of law?

[9] Is there an arguable case that the General Division made an important error of fact by overlooking or misunderstanding that she could buy a phone card when she went to the bank?

I am not giving the Claimant permission to appeal

General Principles

[10] For the Claimant's application for leave to appeal to succeed, her 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.

[11] 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.¹

[12] 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. Other court decisions have equated a reasonable chance of success to an "arguable case."²

Procedural fairness

[13] The Claimant argued that the General Division member "bullied and badgered her" and questioned her, "aggressively." I understand her to mean that the General Division acted unfairly. She could be saying that the General Division member's

¹ 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).

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

behaviour caused her to believe it was biased against her, or she could be saying that its actions interfered with her ability to make her case.

[14] The test for bias is what an informed person, viewing the matter realistically and practically - and having thought the matter through – conclude.³

[15] Whatever the precise nature of her concern, there is no arguable case that a reasonable person informed as to all the relevant circumstances, would believe that the General Division member was biased towards the Claimant.

[16] I have listened to the audio recording of the hearing, and the manner of the member's questioning was entirely appropriate. The member was trying to draw out and clarify the Claimant's evidence, whatever that evidence might be. There is no suggestion that the member had already made up his mind before hearing her testimony or that he was selecting or shaping the Claimant's evidence to support some predetermined outcome.

[17] Furthermore, the member was at all times courteous and respectful. There is not the slightest hint that he disliked or disapproved of the Claimant. He did not interfere with the Claimant's ability to be heard. To the contrary, he was trying to help her to present her case.

Error of law

[18] Reasons which are not transparent and intelligible may be so inadequate as to be an error of law.

[19] In this case, there is no arguable case that the General Division made an error of law. The General Division's reasons are both transparent and intelligible. They describe the legal test for good cause accurately, and explain how the test is applied.⁴ They summarize the Claimant's evidence and arguments, and make findings on the facts that

³ R. v. S. (R.D.), [1997] 3 S.C.R. 484.

⁴ See paras 9–12 of the General Division decision.

the member accepts. Finally, the reasons show how the General Division applied the legal test to the facts.⁵

[20] The General Division understood that the Claimant had been highly anxious, but also recognized that she had been able to speak to her landlords and that they had willingly brought her groceries (when she was not leaving her apartment). The General Division found that the Claimant could have asked her landlords to purchase a phone card for her so that she could contact the Commission. As a result, it held that she did not act as a reasonable and prudent person and therefore, did not have good cause for her delay.

[21] The Claimant may disagree with the General Division's findings. She may feel that the General Division should have accepted that she was too anxious to ask her landlords to buy her a phone card. But there is no arguable case that the General Division did not clearly explain how it reached its decision.

Error of fact

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

[23] In her application to the Appeal Division, the Claimant disagreed with a statement she quoted from the General Division decision. She disagreed that she could have bought a phone card or gone to Service Canada at the same time that she went to the bank.

[24] However, she was not quoting from the General Division's findings of fact. She was quoting what the General Division said was part of the Commission's arguments.⁶ The General Division specifically noted that it was **not** saying that she could have bought herself a bank card because she went to the bank.⁷ Rather, its decision was based on its finding that she could have asked her landlords to buy her a phone card.

⁵ See paras 32 and 33 of the General Division decision.

⁶ See para 6 of the General Division decision.

⁷ See para 26 of the General Division decision.

[25] I appreciate that the Claimant is unrepresented. She may not have understood precisely what she should argue. Therefore, I searched the record for relevant evidence that the General Division may have ignored or misunderstood.⁸

[26] Unfortunately for the Claimant, the record does not support an argument that the General Division may have made an important error of fact. The General Division considered the circumstances suggested by the evidence and did not ignore or misunderstand any evidence related to those circumstances.

Conclusion

[27] I am refusing permission to appeal. This means that the appeal will not proceed.

Stephen Bergen
Member, Appeal Division

⁸ I am following the lead of the Federal Court in decision such as *Karadeolian v. Canada (Attorney General)*, 2016 FC 615.