



Citation: *YA v Canada Employment Insurance Commission*, 2024 SST 248

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: Y. A.
Representative: Tadesse Gebremariam

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated September 21, 2023
(GE-23-1428)

Tribunal member: Solange Losier

Decision date: March 11, 2024

File number: AD-24-5

Decision

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

Overview

[2] Y. A. is the Claimant in this case. He applied for Employment Insurance (EI) regular benefits a few months after he stopped working, on February 13, 2023.

[3] The Canada Employment Insurance Commission (Commission) decided that he didn't have good cause to antedate his EI claim for the period between October 16, 2022 to February 13, 2023.¹ It also decided that he had not proven that he was not available for work from February 12, 2023. The Claimant appealed the Commission's decision to the General Division of the Tribunal.

[4] On the issue of antedate, the General Division concluded that the Claimant hadn't shown good cause for the delay in applying for EI benefits, so his application could not be antedated to October 16, 2022.² On the issue of availability, it decided that the Claimant had not proven he was not available for work.

[5] The Claimant is now asking for permission to appeal the General Division decision.³

[6] I am denying the Claimant's request for permission to appeal because it has no reasonable chance of success.⁴

¹ See Commission's reconsideration decision at page GD3-30.

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

³ See application to the Appeal Division at pages AD1-1 to AD1-9. Specifically, he is appealing the General Division decision for Tribunal file GE-23-1428.

⁴ See section 58(2) of the *Department of Employment and Social Development (DESD Act)*. I have to refuse leave to appeal if I am satisfied that the appeal has no reasonable chance of success.

Preliminary matters

[7] The Claimant didn't use the correct forms to appeal to the Appeal Division. Also, it looked like his application was made late.⁵

[8] I wrote to the Claimant to ask for more information about his appeal.⁶ I explained that it looked like his application was late and if so, to provide a reasonable explanation. I also asked him to explain why he was appealing the General Division decision based on the reasons that the Appeal Division could consider (this is also called the "grounds of appeal").⁷

[9] The Claimant replied to my letter and wrote that his application was not late because he appealed within 30 days.⁸ He argues that he has a right to get justice based on procedural fairness and error of jurisdiction. He also said that he was harassed, abused and injured in his previous job.

[10] I noticed that many of the Claimant's arguments to the Appeal Division were about why he left his job, but that wasn't the decision under appeal.⁹ So, I wrote him a letter offering a case conference to clarify the General Division decision under appeal.

[11] In my letter, I explained that the General Division issued two separate decisions on the same date (September 20, 2023).¹⁰ The first decision, the one under appeal, dealt with the issue of antedate and availability only.¹¹ The second decision, which was not appealed, dealt with voluntarily leaving his job. On the issue of voluntary leave, the General Division allowed the appeal in favour of the Claimant.¹²

⁵ The Claimant used the forms that are typically used when you appeal to the General Division. There are different forms for the Appeal Division that provide detail information about the grounds of appeal.

⁶ See Tribunal letter dated January 31, 2024.

⁷ See section 58(1) of the DESD Act.

⁸ See Claimant's reply at pages AD1D-1 to AD1D-5.

⁹ See pages AD1-4 and AD1D-1 to AD1D-5. The Claimant wrote he was appealing General Division decision GE-23-1428.

¹⁰ See Tribunal file number GE-23-1428 (antedate and availability file) and GE-23-1432 (voluntary leave file).

¹¹ See Commission's reconsideration decision at page GD3-30.

¹² See letter dated February 9, 2024 at pages AD1E-1 to AD1E-3.

[12] A copy of the letter was sent to the Claimant and his legal representative, but neither of them replied by the deadline set out, or as of the date of this decision.¹³ As a result, no case conference was held and I proceeded with the usual next steps.

[13] The Claimant has only appealed the General Division's decision on the issue of antedate and availability on the grounds that it made an error of procedural fairness and error of jurisdiction.¹⁴ As a result, I will not be reviewing the General Division's other decision about the voluntary leave because it has not been appealed.¹⁵

Issues

[14] The issues in this appeal are:

- a) Was the application to the Appeal Division late?
- b) Is there an arguable case that General Division didn't follow procedural fairness?
- c) If there an arguable case that the General Division made an error of jurisdiction?

Analysis

The application to Appeal Division was not filed late

[15] The deadline to file an application to the Appeal Division is 30 days after the day on which the General Division decision was communicated to him in writing.¹⁶

[16] I have to decide whether the Claimant's application was made late.

[17] The General Division's decision is dated September 20, 2023.¹⁷

¹³ The deadline to reply was February 16, 2024. The Commission was also copied on this letter.

¹⁴ See section 58(1)(a) of the DESD Act.

¹⁵ The voluntary leave decision was not appealed and is already in the Claimant's favour (file GE-23-1432).

¹⁶ See section 57(1)(a) of the DESD Act.

¹⁷ See General Division decision at pages AD1A-1 to AD1A-9.

[18] The Claimant argues that his application to the Appeal Division was not made late.¹⁸ He explains that he sent the Tribunal some correspondence on November 17, 2023, and it was acknowledged as received on November 30, 2023.

[19] The Claimant identified the same date in his forms to the Appeal Division. While he used the incorrect forms, he noted the November 30, 2023 date in one of the applicable boxes.¹⁹

[20] The Claimant then made an application to the Appeal Division on December 26, 2023.²⁰ So, he argues it was within the 30 day period from November 30, 2023.

[21] The file shows that the Claimant sent the General Division of the Tribunal some correspondence on November 23, 2023.²¹ The Tribunal sent him an acknowledgement letter on November 30, 2023 but the post decision correspondence was rejected because the decision had already been finalized by the General Division on September 20, 2023. The file was already closed. The acknowledgment letter outlined the steps to appeal to the Appeal Division.

[22] So, I think the Claimant is arguing that the General Division decision was only communicated to him on November 30, 2023 when he got the Tribunal's acknowledgement letter about his post decision correspondence. That letter outlined the steps to appeal to the Appeal Division. He then appealed to the Appeal Division on December 26, 2023.

[23] I accept that the General Division's decision was communicated to the Claimant on November 30, 2023. I am relying on what the Claimant wrote in his forms and letter to the Appeal Division. As well, this date is consistent with the Tribunal's acknowledgment letter to him.

¹⁸ See pages AD1D-1 to AD1D-5.

¹⁹ See page AD1-3.

²⁰ See Application to the Appeal Division at pages AD1-1 to AD1-9.

²¹ The Claimant dated the correspondence November 17, 2023, but it was only received by the Tribunal on November 23, 2023.

[24] This means that the 30 day deadline to file his application to the Appeal Division was December 31, 2023.

[25] The Claimant applied to the Appeal Division on December 26, 2023, so that means he did it on time. Therefore, I find that the application to Appeal Division was not made late. I don't need to consider whether to extend the time because his application to the Appeal Division was not late.

I am not giving the Claimant permission to appeal

[26] An appeal can proceed only if the Appeal Division gives permission to appeal.²²

[27] I must be satisfied that the appeal has a reasonable chance of success.²³ This means that there must be some arguable ground upon which the appeal might succeed.²⁴

[28] I can only consider certain types of errors. I have to focus on whether the General Division could have made one or more of the relevant errors.²⁵

[29] The possible grounds of appeal to the Appeal Division are that the General Division did one of the following:²⁶

- proceeded in a way that was unfair
- acted beyond its powers or refused to exercise those powers
- made an error in law
- based its decision on an important error of fact.

[30] The Claimant says that he has a right to get justice and he is relying on the following grounds of appeal: procedural fairness and an error of jurisdiction.²⁷

²² See section 56(1) of the DESD Act.

²³ See section 58(2) of the DESD Act.

²⁴ See *Osaj v Canada (Attorney General)*, 2016 FC 115.

²⁵ See section 58(1) of the DESD Act.

²⁶ See section 58(1) of the DESD Act.

²⁷ See pages AD1D-1 to AD1D-5 and section 58(1)(a) of the DESD Act.

[31] For the appeal to proceed to the next step, I have to find that there is a reasonable chance of success on one of the above grounds of appeal.

– **There is no arguable case that the General Division didn't follow a fair process**

[32] Procedural fairness is about the fairness of the process. It includes procedural protections including the right to an unbiased decision-maker, the right of a party to be heard and to know the case against them and to be given an opportunity to respond.

[33] In other words, if the General Division didn't follow a fair process, then I can intervene.²⁸

[34] The Claimant argues that the General Division didn't follow a fair process because he did not receive a response to the letter and information he submitted to the Tribunal on November 17, 2023.

[35] The file shows that the Claimant sent the General Division post decision correspondence on November 23, 2023.²⁹ In his letter, he is rearguing his case and expressing his dissatisfaction with the outcome.

[36] First, the General Division was not obliged to consider the post decision correspondence sent by the Claimant. It was sent approximately two months after its decision was already issued on September 20, 2023.

[37] Second, the audio recording shows that the Claimant was given a full and fair opportunity to provide his evidence and make his submissions at the General Division hearing.³⁰ The Claimant and his representative attended, as well as an interpreter was there to translate during the hearing.

²⁸ See section 58(1)(a) of the DESD Act.

²⁹ The Claimant dated it November 17, 2023, but it was only received by the Tribunal on November 23, 2023.

³⁰ The General Division first heard the appeal dealing with voluntary leave. That followed by the second file dealing with the antedate and availability issue. The relevant part of the audio recording starts at 1:16 to 2:15.

[38] A party to an appeal may think that a General Division decision is unfair or that particular findings in the decision are unfair, but it doesn't mean that the General Division hearing process was unfair.

[39] There is no arguable case that the General Division didn't follow a fair process when it rejected his post decision correspondence. Also, there is no indication in the file or on the audio recording that the General Division didn't follow a fair process.

– **There is no arguable case that the General Division made an error of jurisdiction**

[40] An error of jurisdiction means that the General Division didn't decide an issue it had to decide or decided an issue it didn't have the authority to decide.³¹

[41] The Claimant says that the General Division decision went against the *Human Rights Code* and they would take the matter to the Human Rights Tribunal.³² He also says the decision went against section 15(2) of the *Canadian Charter of Rights and Freedoms* (Charter).³³

[42] First, the General Division only decided the issues it had the power to decide.

[43] The Commission denied the Claimant's request to antedate his EI claim to an earlier date.³⁴ As well, it said that he was not available for work. The Claimant appealed that decision to the General Division.³⁵

[44] This means that the General Division's jurisdiction was limited to deciding whether the Claimant could antedate his EI claim to October 16, 2022. It also had to decide if he was available for work from February 12, 2023.

³¹ See section 58(1)(a) of the DESD Act.

³² See *Human Rights Code*, R.S.O. 1990, c. H.19.

³³ See *Canadian Charter of Rights and Freedoms*, s 7, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11.

³⁴ See reconsideration decision at page GD3-30.

³⁵ See sections 112 and 113 of the *Employment Insurance Act* (EI Act).

[45] The General Division ultimately decided that the Claimant hadn't shown he had good cause for the delay in applying for EI benefits. As well, it decided that he hadn't shown he was available for work.

[46] The Tribunal is allowed to hear Charter appeals. It has a separate process for Charter appeals.³⁶ While the Claimant did note section 15(2) of the Charter in his Notice of Appeal to the General Division, that argument was connected to the voluntary leave issue. As a result, the General Division didn't make any findings relating to the Charter for this particular file and it didn't need to.

[47] The General Division decision shows that it only decided the issues it had the power to decide.

[48] Second, the General Division didn't decide any issues that it had no power to decide.

[49] The Claimant argues that his employer discriminated against him, harassed and abused him as reasons for leaving his employment.

[50] The Claimant appears to be raising arguments about why he left his employment. However, the issue under appeal was about antedating his claim and his availability for work. As noted above, the General Division already issued a decision on the issue of voluntary leave and found in the Claimant's favour.

[51] The Claimant wrote that he would take the matter to the Human Rights Tribunal. He remains free to do so if he believes that his former employer discriminated against him.

[52] There is no arguable case that the General Division made an error of jurisdiction.³⁷ It only decided the issues it had the power to decide and did not decide any issues it had no power to decide.

³⁶ See section 1(1) of the *Social Security Tribunal Regulations*.

³⁷ See section 58(1)(b) of the DESD Act.

Conclusion

[53] Aside from the Claimant's arguments, I reviewed the entire file, listened to the hearing recording, and examined the General Division decision.³⁸ The General Division summarized the law and its findings were supported by the evidence. There was no evidence that the General Division might have ignored or misinterpreted.³⁹

[54] Permission to appeal is refused. This means that the appeal will not proceed.

Solange Losier
Member, Appeal Division

³⁸ The relevant part of the audio recording starts at 1:16 to 2:15.

³⁹ See *Karadeolian v Canada (Attorney General)*, 2016 FC 165 at paragraph 10 which recommends doing such a review.