



Citation: *FM v Canada Employment Insurance Commission*, 2024 SST 260

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

# **Leave to Appeal Decision**

**Applicant:** F. M.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated January 25, 2024  
(GE-23-3389)

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**Tribunal member:** Janet Lew

**Decision date:** March 14, 2024

**File number:** AD-24-134

## Decision

[1] Leave (permission) to appeal is refused. The appeal will not be going ahead.

## Overview

[2] The Applicant, F. M. (Claimant), is seeking leave to appeal the General Division decision. The General Division found that the Claimant was late when he claimed Employment Insurance benefits.

[3] The Claimant wants his claims antedated (backdated) to June 4, 2023. That way, he will not be disentitled from receiving Employment Insurance benefits between June 4, 2023 and September 1, 2023.

[4] The General Division determined that the Claimant had to prove that he had good cause for the delay during this entire period. It found that he did not show that he had good cause for the delay. He had not given an explanation for the delay that the law accepts. This meant that his claim could not be treated as if he had made it earlier. The General Division found that the Claimant was disentitled from receiving Employment Insurance benefits from June 4, 2023 to September 1, 2023.

[5] The Claimant argues that the General Division made important factual errors. In particular he says that the General Division made an error when it found that he filed many reports, the first for the period from June 15 to June 30, 2023. He denies that he filed any reports at all.

[6] Before the Claimant can move ahead with the appeal, I have to decide whether the appeal has a reasonable chance of success. In other words, there has to be an arguable case.<sup>1</sup> If the appeal does not have a reasonable chance of success, this ends the matter.<sup>2</sup>

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<sup>1</sup> See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

<sup>2</sup> Under section 58(2) of the *Department of Employment and Social Development (DESD) Act*, I am permission if I am satisfied “that the appeal has no reasonable chance of success.”

[7] I am not satisfied that the appeal has a reasonable chance of success. Therefore, I am not giving permission to the Claimant to move ahead with the appeal.

## **Issue**

[8] Is there an arguable case that the General Division made important factual errors?

## **I am not giving the Claimant permission to appeal**

[9] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success. A reasonable chance of success exists if the General Division may have made a jurisdictional, procedural, legal, or a certain type of factual error.<sup>3</sup>

[10] For these types of factual error, the General Division had to have based its decision on an error that it made in a perverse or capricious manner, or without regard for the evidence before it.<sup>4</sup>

## **The Claimant does not have an arguable case that the General Division made important factual errors**

[11] The Claimant does not have an arguable case that the General Division based its decision on an error that it made in a perverse or capricious manner or without regard for the evidence before it. Generally, the General Division correctly set out the Claimant's evidence. But it simply did not accept the Claimant's evidence and did not base its decision on that evidence.

[12] The Claimant says the General Division made two major mistakes about the facts, that:

- i. He filed many reports and

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<sup>3</sup> See section 58(1) of the DESD Act.

<sup>4</sup> See section 58(1)(c) of the DESD Act.

- ii. He filed his first report for the period June 15 to June 30, 2023.

[13] The Claimant points to paragraphs 28, 32, and 35 of the General Division decision. At Paragraph 28, the General Division wrote that the Claimant testified that he filed his first report for the period June 15 to 30, 2023. At paragraph 35, the General Division wrote that the Claimant said that he filed many reports.

- Paragraph 28

[14] The Claimant denies that he filed many reports or that he first filed a report for the June 15 to June 30, 2023 period. The Claimant says the General Division misstated the evidence.

[15] However, a review of the evidence shows that the General Division correctly set out the Claimant's evidence. The following questions and answers were given at the General Division hearing:

General Division: When did you try to file your first report?

Claimant: June. In June. June. I tried to file my first report in June, but according to...

General Division: Do you recall when in June?

Claimant: Uh, I think it was between 15 to 30<sup>th</sup> June. I don't remember the exact date but that's when I called Service Canada to find out why I'm not getting any payments because I filed a claim in May...<sup>5</sup>

[16] Generally, the General Division correctly noted the Claimant's evidence.

[17] However, even if the General Division had misstated the evidence, the General Division did not accept the Claimant's testimony. As the General Division explained, it found that the Claimant's testimony that he tried to file a report in June 2023 was

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<sup>5</sup> At approximately 39:50 of the audio recording of the General Division hearing.

contradicted by his own evidence, as well as by the Respondent, the Canada Employment Insurance Commission (Commission). The Commission had stated that the Claimant had not filed any reports for April 30 to August 26, 2023.

[18] The General Division also found that if the Claimant had actually filed reports, the Commission would have either paid him benefits, or contacted him about any deficiencies or questions related to the Claimant's reports.

[19] It is clear that the General Division did not base its decision on the Claimant's evidence that he had filed his first report in June.

- Paragraph 35

[20] The Claimant denies that he filed many reports. He says that he did not file any reports. He explains that he might have been trying to convey that if he had known that he was required to file reports, he would have filed them. He says the General Division misstated the evidence.

[21] The General Division might have failed to understand the Claimant, but ultimately, it did not accept that the Claimant had filed many reports. The General Division wrote, "While the [Claimant] said that he did file many reports, I have found that he did not file any biweekly reports during that period."

- Paragraph 32

[22] The General Division set out its findings. It wrote:

Based on the review of the evidence above, I make the following findings of fact. First, no one told the Appellant not to file reports at any time. Second, I do not accept that the Appellant learned in June about the need to file reports. He only learned of that requirement in September when he requested an antedate. Third, the Appellant did not file any reports in the April to August period of delay. Fourth, the Appellant did call the Commission in June, July, August and September, but did not always connect. Fifth, the Appellant was unfamiliar with the EI process, as he had not applied for EI benefits in the past.

[23] In response to paragraph 32, the Claimant states that he connected with the Commission by phone. He tried to get his claims backdated. The Commission told him that he was locked out of the system so he could not file reports in June because he missed filing the first two reports.

[24] However, the Claimant did not identify any errors that the General Division might have made in paragraph 32.

- Summary

[25] The Claimant says that the General Division made factual errors. But the General Division correctly restated the Claimant's testimony. Even if the General Division had misstated the Claimant's evidence, it did not base its decision on those alleged factual errors. The General Division simply did not accept the Claimant's evidence that he had filed many reports and had filed a report in June 2023.

[26] In summary, the General Division did not base its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the evidence before it.

## **Conclusion**

[27] The appeal does not have a reasonable chance of success. Permission to appeal is refused. This means that the appeal will not be going ahead.

Janet Lew  
Member, Appeal Division