Citation: *JC v Canada Employment Insurance Commission*, 2024 SST 75

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	J. C.
Respondent:	Canada Employment Insurance Commission
Decision under appeal:	General Division decision dated November 3, 2023 (GE-23-2705)
Tribunal member:	Janet Lew
Decision date:	January 25, 2024
File number:	AD-23-1093

Decision

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

Overview

[2] The Applicant, J. C. (Claimant), is seeking leave to appeal the General Division decision. The General Division dismissed the Claimant's appeal to have her application for Employment Insurance benefits antedated (backdated) from June 29, 2023, to July 15, 2022, so it would not be considered late.

[3] The General Division found that the Claimant had not met the conditions to have her application backdated. It found that the Claimant had not shown good cause for not applying for benefits sooner. The Claimant did not apply for Employment Insurance benefits until after she had exhausted her severance payments.

[4] As a result of being unable to backdate her application, the Claimant did not have enough insurable hours in her qualifying period to qualify for benefits. If she had been able to backdate her application, she would have had sufficient hours and would have qualified for benefits.

[5] The Claimant argues that General Division acted unfairly by making an unjust decision. She says that she had good cause for the delay, so says her claim should have been backdated.

[6] The Claimant also argues that the General Division made legal errors. For one, she says that the cases that the General Division relied on are factually distinguishable from her case. And two, the General Division misinterpreted or overlooked sections 24 and 36 of the *Employment Insurance Regulations* (Regulations).

[7] 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.[1] If the appeal does not have a reasonable chance of success, this ends the matter.[2]

[8] 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.

Issues

[9] The issues are as follows:

a) Is there an arguable case that the General Division process was unfair?

b) Is there an arguable case that the General Division made legal errors?

I am not giving the Claimant permission to appeal

[10] 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.[3]

The Claimant does not have an arguable case that the General Division process was unfair

[11] The Claimant does not have an arguable case that the General Division process was unfair. Procedural fairness is concerned with the fairness of the process. It is not concerned with whether a party feels that the decision is unjust.

[12] Parties before the General Division enjoy rights to certain procedural protections such as the right to be heard and to know the case against them, the right to timely notice of hearings, and the right to an unbiased decision-maker.

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[1] See *Fancy v Canada (Attorney General)*, 2010 FCA 63.
[2] Under section 58(2) of the *Department of Employment and Social Development* (DESD) *Act,* I am required to refuse permission if I am satisfied "that the appeal has no reasonable chance of success."
[3] See section 58(1) of the DESD Act.

[13] As far as I can determine, the Claimant received all of the file materials. She received adequate notice of the hearing. The Respondent, the Canada Employment Insurance Commission (Commission), fully set out its position in its representations, so she should have known the case she had to meet. There is no indication either that the General Division did not give the Claimant a fair hearing or a reasonable chance to present her case. There is no suggestion of bias. I am not satisfied that there is an arguable case that the General Division process was unfair.

The Claimant does not have an arguable case that the General Division made legal errors

[14] The Claimant does not have an arguable case that the General Division made legal errors.

– **The case law on which the General Division relied**

[15] The Claimant argues that the General Division made a legal error by relying on *Mauchel*[4] and *Albrecht*,[5] cases she says that are factually distinguishable from her case.

[16] The Claimant argues that the General Division misstated what *Mauchel* actually says.. She says that “this case did not say that information online was general in nature, it did NOT say that relying on information contained online wasn’t not sufficient.”[6] In her case, she did more than just looking on-line for information. She also viewed blog posts on law firm websites and spoke to her former employer’s human resources department. So, she says that all of her efforts should be sufficient to show that she had good cause for her delay.

[17] The Claimant also says that both *Mauchel* and *Albrecht* are factually distinguishable from her case. Mr. Mauchel did not receive severance. More importantly, after leaving his employment, he did not investigate or check to see if he

[4] See *Mauchel v Canada (Attorney General),* 2012 FCA 202.
[5] See *Canada (General) v Albrecht,* A-172-85.
[6] See Claimant’s arguments in Application to Appeal Division – Employment Insurance, at AD 1-3.

was entitled to benefits. And, he waited two years before applying for benefits and asking for an antedate.

- **The Claimant says she sought out information**

[18] In her case, she sought out information immediately and asked for an antedate in roughly half the length of time.

[19] The Claimant's efforts included the following:

- Google searches on how severance pay works – according to an online human resources news site, she read that, "EI benefits will start to come in once the months covered by the severance pay are over as support while the individual looks for employment."[7]
- Google search – according to a multi-national law firm, she read that, "EI payments will usually begin after your severance period has expired and run its course."[8]
- Google search on "what happens if I get severance while on EI?" – according to a Toronto-based labour law firm, "individuals are not allowed to collect Employment Insurance (EI) benefits while they receive severance pay."[9]

[20] The Claimant understood from this information that she could not collect severance and Employment Insurance benefits at the same time. She relied on this information, in part, before applying for benefits. However, this information did not address the antedate issue or indicate when a claimant should apply for benefits after they stop working.

[21] In other words, the Claimant's search efforts appear to have been misdirected. Instead of looking for information about when a claimant should be applying for benefits,

[7] See Claimant's Google search, at GD 6-2.
[8] See Claimant's Google search, at GD 6-3.
[9] See Claimant's Google search, at GD 6-4 to 6-6.

she focused instead on whether she could collect benefits while receiving severance pay.

[22] The Claimant is not suggesting that looking online in her case was sufficient. Rather, she is saying that not only did she look online, but that she also spoke with her former employer's human resources department . She is also saying that all of these efforts should show that she acted reasonably.

- **The General Division considered the Claimant's efforts**

[23] The General Division was mindful of the Claimant's efforts. In noted that when the Claimant felt better in about September 2022, she went online and consulted the websites mentioned above.[10]

[24] The General Division also noted that the Claimant spoke to her employer's human resources department about claiming Employment Insurance. The General Division noted that she was told that she would get benefits at the end of the period for which she had been paid severance.[11]

[25] This information confirmed what the Claimant had obtained about two decades earlier from the Commission. She recalled that the Commission told her in 2004 that she could not claim benefits until after exhausting her severance.

- **The General Division's reliance on *Mauchel* and *Albrecht***

[26] Often, there will be notable factual differences between cases, but that does not mean that a decision-maker cannot rely on decisions for general principles, which is what the General Division did in this case.

[27] The General Division cited *Mauchel* and *Albrecht* for the proposition that acting as a reasonable person in the context of an antedate request means promptly taking steps, after one has stopped working, to learn about one's rights and obligations under

[10] See General Division decision, at para 26.
[11] See General Division decision, at para 27.

the *Employment Insurance Act*. The Claimant does not challenge this general proposition.

[28] The General Division also cited *Mauchel* for the proposition that one cannot simply rely on online information because it is general in nature and does not deal with a claimant's particular circumstances. The Claimant does not seem to challenge this general proposition either, but says that the information she viewed online specifically addressed her case. More importantly, she says that she sought information beyond looking online.

[29] The Federal Court of Appeal in *Mauchel* held that:

> [13] . . . . A reasonable person who relies on the website for information must do more thorough research than Mr. Mauchel apparently undertook. A reasonable person would not have been so misled by its initial general statements about eligibility as to be deterred from looking for more specific information relevant to his or her situation. The statements early in the website that EI is for those who lose employment through no fault of their own are general enough to include those who are longer employed because they voluntarily quit their job with just cause.
>
> [14] In my view, the website contained enough information to have alerted a reasonable person in Mr. Mauchel's position to wonder whether he or she might be eligible for benefits and to contact the Commission to find out or to make an application for benefits. The question is not whether a particular claimant found the information clear and unambiguous, and decided that further search of the website was pointless, but whether a reasonable person would have so regarded it. It is not alleged that the website contained erroneous material.

[30] The General Division provided an accurate restatement of the principles set out in *Mauchel* and *Albrecht.* It is clear that a claimant has to do more thorough research beyond considering initial general online statements.

[31] The Court of Appeal emphasized that the question should be: What would a reasonable person have done?

[32] Ultimately, the General Division determined that it had to examine what a reasonable person would have done in the Claimant's case. The General Division

determined that the Claimant’s efforts—looking online and speaking with her employer’s human resources department—were insufficient to meet the reasonable person test.

[33] The General Division determined that a reasonable person would have contacted the Commission to verify the information that she had received about 20 years ago, as well as the information she received on websites and from her employer.

[34] I am not satisfied that the Claimant has an arguable case that the General Division misinterpreted or misapplied *Mauchel* and *Albrecht*. The General Division relied on the general principles from the two decisions and applied them to the facts in the Claimant’s case.

– **Sections 24 and 36 of the Employment Insurance Regulations**

[35] The General Division did not overlook or misinterpret sections 24 and 36 of the Regulations. Contrary to what the Claimant says, section 36 does not contradict section 24, and section 36 does not say that severance does not constitute earnings. Section 36 deals with how any earnings are to be allocated.

[36] The Claimant says that the General Division misinterpreted or overlooked sections 24 and 36 of the Regulations. These sections deal with the allocation of earnings. She says that they contradict each other. She argues that section 24 defines severance as earnings, but argues that section 36 says otherwise. She contends that the General Division should have recognized this contradiction, as it would have then declared that the severance she received did not constitute earnings that had to be allocated against her claim.

[37] However, section 36 does not state that severance payments do not constitute earnings. The section describes how earnings should be allocated.

[38] The Claimant notes that the General Division pointed out that the *Budget Implementation Act* temporarily suspended the allocation of any severance for claims made between September 26, 2021, and September 25, 2022.

[39] The Claimant argues that these changes also contradicted sections 24 and 36 of the Regulations. However, those provisions were temporarily suspended, meaning that severance payments were not allocated for claims made within that timeframe. Hence, there was no contradiction.

[40] I am not satisfied that there is an arguable case that the General Division overlooked or misinterpreted sections 24 and 36 of the Regulations. As the Claimant had not filed her claim between September 26, 2021, and September 25, 2022, the General Division found that section 24 of the Regulations applied. The section defined severance payments as earnings. Thus, the Claimant severance payments had to be allocated in the manner set out under section 36 of the Regulations.

Conclusion

[41] 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