



Citation: *SB v Canada Employment Insurance Commission*, 2024 SST 272

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant: S. B.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated February 9, 2024
(GE-23-3515)

Tribunal member: Stephen Bergen

Decision date: March 18, 2024

File number: AD-24-148

Decision

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

Overview

[2] S. B. is the Applicant. I will call her the Claimant because this appeal is about her claim for Employment Insurance (EI) benefits.

[3] The Claimant's mother died, so the Claimant quit her job and moved to Alberta where she still had family. She applied for EI benefits, but the Commission refused. It said she had left her job without just cause. When the Claimant asked the Commission to reconsider it would not change its decision.

[4] The Claimant appealed to the General Division of the Social Security Tribunal (Tribunal), which dismissed her appeal. Now she is asking the Appeal Division for permission to appeal the General Division decision.

[5] I am refusing permission to appeal. The Claimant has not made out an arguable case that the General Division made an error that I may consider.

Issue

[6] Is there an arguable case that the General Division made an error of law in finding that the Claimant could not bring an appeal after a lapse of more than a year?

[7] Is there an arguable case that the General Division made an error of fact when it found that the Claimant filed her appeal more than a year after the Commission communicated its reconsideration decision to her?

I am not giving the Claimant permission to appeal

[8] For the Claimant's application for leave to appeal to succeed, her reasons for appealing would have to fit within the "grounds of appeal." 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.

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

[10] The courts have equated a reasonable chance of success to an “arguable case.”²

[11] The Claimant did not specify what error she believed the General Division had made. However, I appreciate that the Claimant is not represented. The Federal Court has said that—at the leave to appeal stage—the Appeal Division should be especially careful with self-represented parties, who may not know how to frame their appeal.³ Because of this, I have considered whether the General Division may have made some other kind of error in how it determined that the Claimant was more than a year late.

Error of law

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

[13] As the General Division decision correctly identified, the *Department of Employment and Social Development Act* (DESDA) states that a Claimant may not bring an appeal that is more than a year late **under any circumstances**.⁴

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.

³ See the decision in *Karadeolian v. Canada (Attorney General)*, 2016 FC 615.

⁴ See para 2 of the General Division decision.

[14] Once an appeal is more than a year late, the General Division has no discretion to allow the appeal to proceed. Other decisions of the Federal Court have confirmed this.⁵

Important error of fact

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

[16] The Claimant believes she has a good reason for being late, because it took some time to get the employer to change her Record of Employment. However, she has not suggested that the General Division ignored or misunderstood any evidence that caused it to miscalculate the delay (between when she received the reconsideration decision and when she filed her appeal).

[17] The Claimant did not dispute that she filed her Notice of Appeal on December 11, 2023, and she did not dispute that the Commission told her that it was maintaining its original decision on August 24, 2022, or that it confirmed this in a letter dated August 30, 2022.⁶

[18] Because her appeal was more than a year late, the law would not have permitted the General Division to consider her late appeal. No matter how compelling her reasons for delaying her appeal, they are irrelevant to the General Division's decision to refuse to hear her appeal.

[19] There is no arguable case that the General Division made an error by not considering evidence that is not relevant to its decision.

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

⁵ See *Smith v. Canada (Attorney General)*, 2020 FC 1192, *Pelletieri v Canada (Attorney General)*; 2019 FC 1585.

⁶ See GD3-37 and GD3-40.

Conclusion

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

Stephen Bergen
Member, Appeal Division