



Citation: *KC v Canada Employment Insurance Commission*, 2024 SST 404

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: K. C.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated March 5, 2024
(GE-24-28)

Tribunal member: Pierre Lafontaine

Decision date: April 22, 2024

File number: AD-24-269

Decision

[1] Leave to appeal is refused. This means the appeal will not proceed.

Overview

[2] On May 13, 2016, the Applicant (Claimant) submitted an EI claim indicating that his last day of work was March 28, 2016. He made a request to backdate his claim to March 28, 2016. The Respondent (Commission) concluded that the Claimant had failed to show good cause throughout the entire period of the delay in filing his EI claim and denied his request.

[3] On January 11, 2021, the Claimant submitted a request for reconsideration indicating that his reasons for the delay were that he did not know about EI benefits until his first job. On January 19, 2021, the Commission decided that it would not be reconsidering its initial decision.

[4] On December 1, 2023, the Claimant appealed that decision to the General Division of the Tribunal.

[5] The General Division determined that the Commission's decision not to extend the time limit for requesting reconsideration was communicated to the Claimant both verbally and in writing on January 19, 2021. It determined that the law says that in no case may an appeal be brought more than one year after communication of the Commission's reconsideration decision. It concluded that the Claimant's appeal was not filed on time and therefore could not proceed.

[6] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. He submits that the gap in time is due to inconsistent information he received. He puts forward that he was manipulated to believe he had no options until he did his own research.

[7] I refuse leave to appeal because the Claimant's appeal has no reasonable chance of success.

Issue

[8] Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

Analysis

[9] Section 58(1) of the *Department of Employment and Social Development Act* specifies the only grounds of appeal of a General Division decision. These reviewable errors are that:

1. The General Division hearing process was not fair in some way.
2. 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.
3. The General Division based its decision on an important error of fact.
4. The General Division made an error of law when making its decision.

[10] An application for leave to appeal is a preliminary step to a hearing on the merits. It is an initial hurdle for the Claimant to meet, but it is lower than the one that must be met on the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove his case but must establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, that there is arguably some reviewable error upon which the appeal might succeed.

[11] Therefore, before I can grant leave to appeal, I need to be satisfied that the reasons for appeal fall within any of the above-mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success.

Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

[12] The Claimant submits that the gap in time is due to inconsistent information he received. He puts forward that he was manipulated to believe he had no options until he did his own research.

[13] The General Division had to decide whether the Claimant brought his appeal in time.

[14] The General Division determined that the Commission's decision not to extend the time limit for requesting reconsideration was communicated to the Claimant both verbally and in writing on January 19, 2021. It noted that the decision was sent to the same address that the Claimant indicated on his request for reconsideration form. The General Division considered that the decision letter clearly states in bold print that if the Claimant disagreed with the decision, he had 30 days following the receipt of the notice to appeal to the Tribunal.

[15] The General Division determined that the Claimant appealed the Commission's decision to the General Division on December 1, 2023, almost three years after receiving communication of said decision.

[16] An appeal of a decision must be brought to the General Division 30 days after the day on which it is communicated to a claimant.¹ The law clearly states that in no case may an appeal be brought to the General Division more than one year after the day on which the Commission's decision is communicated to a claimant.²

[17] Furthermore, the law does not allow **no discretion** to the Tribunal to extend further than one year the delay to appeal to the General Division.

[18] Unfortunately, for the Claimant, he has not identified any errors of jurisdiction or law nor identified any erroneous findings of fact, which the General Division may have

¹ Section 52(1) of the *Department of Employment and Social Development Act*.

² Section 52(2) of the *Department of Employment and Social Development Act*.

made in a perverse or capricious manner or without regard for the material before it, in coming to its decision.

[19] For the above-mentioned reasons and after reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Claimant in support of his request for leave to appeal, I find that the appeal has no reasonable chance of success.

Conclusion

[20] Leave to appeal is refused. This means the appeal will not proceed.

Pierre Lafontaine
Member, Appeal Division