



Citation: *SW v Canada Employment Insurance Commission*, 2024 SST 276

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

# **Leave to Appeal Decision**

**Applicant:** S. W.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated January 11, 2024  
(GE-23-3287)

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**Tribunal member:** Janet Lew

**Decision date:** March 19, 2024

**File number:** AD-24-81

## Decision

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

## Overview

[2] The Applicant, S. W. (Claimant), is appealing the General Division decision. But first he has to get permission to appeal before he can move to the actual appeal. So I have to consider whether to give him permission to appeal.

[3] The General Division found that the Claimant did not file reports on time. He should have filed reports between December 20, 2020, and September 18, 2021 for Employment Insurance benefits.

[4] The General Division also found that the Claimant did not have good cause for the delay in filing reports. He had not given an explanation for the delay that the law accepts. This meant that it could not treat his claims as if they had been made earlier. The General Division found that the Claimant was disentitled and could not get benefits going back to December 20, 2020.

[5] The Claimant argues that the General Division made a jurisdictional error. He says that the General Division failed to decide an issue that it had to decide, or it decided something that it did not have the power to decide.

[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>

[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.

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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 required to refuse permission if I am satisfied “that the appeal has no reasonable chance of success.”

## Issues

[8] The issues are as follows:

- (a) Is there an arguable case that the General Division made a jurisdictional error?
- (b) Is there an arguable case that the General Division made any legal or 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 errors, 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 a jurisdictional error

[11] The Claimant does not have an arguable case that the General Division made a jurisdictional error. He argues that the General Division failed to decide something that it should have decided, or decided something that it did not have the power to decide. However, he has not said what it failed to decide. He has also not said what it decided that it should not have decided.

[12] The issue before the General Division was whether the Claimant could antedate (backdate) his claims for Employment Insurance benefits. The Claimant could only backdate his claim if he had a good reason for his delay. The reason had to be one that

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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.

the law accepts. So, the General Division had to consider why the Claimant was late and whether that was a good reason. The General Division looked at these issues. It did not consider any other issues. Therefore, I am not satisfied that there is an arguable case that the General Division made a jurisdictional error.

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

[13] The Claimant does not have an arguable case that the General Division made any legal or factual errors.

[14] The General Division identified and applied the appropriate test to determine whether the Claimant could backdate his claims. The General Division appropriately determined that the Claimant had to show good cause for the delay in making his claims. This was consistent with the requirements of the *Employment Insurance Act*, as well as the case law.

[15] The General Division's findings were also consistent with the evidence. The General Division found that the Claimant applied for Employment Insurance benefits on December 3, 2020. He filed online biweekly reports up to January 2, 2021.<sup>5</sup> After that, he was unable to file more reports. This is because his last report<sup>6</sup> was seen as incomplete. He would need an agent to help him fill it out.

[16] The General Division noted that the Claimant has language issues. The Claimant did not contact the Canada Employment Insurance Commission (Commission) or immediately go to a Service Canada office. He did not understand that this is what he should have done.

[17] Once the Claimant noticed that he was no longer getting benefits, he looked into the matter. This was in about the middle of 2021.

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<sup>5</sup> See online reports, at GD 3-19 to GD 3-28.

<sup>6</sup> The Claimant's last report covered the weeks of December 20 and 27, 2021, and ended January 2, 2021.

[18] The Claimant relied on a friend. Together, they went to a Service Canada office sometime around July or August 2021. There, an agent told him to file his reports by telephone. The Claimant called a few times. He reached an automated telephone system. He did not understand what he had to do, so he gave up trying to file his reports at that time.

[19] In October 2021, the Claimant and his friend called the Commission.<sup>7</sup> With his friend's help, he was able to file a claim. He submitted a claim for the weeks of September 19, 2021, to October 2, 2021.

[20] The Claimant does not challenge these findings. The Claimant does not suggest that the General Division overlooked or ignored any of the evidence.

[21] The Claimant argues that he needed to review his benefits.<sup>8</sup> He had mistakes at reporting time. He denies that he was at fault. He says he did not find anything helpful.<sup>9</sup> These arguments do not suggest that the General Division made any legal or factual errors.

[22] I am not satisfied that there is an arguable case that the General Division made any legal or factual errors.

## **Conclusion**

[23] 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

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<sup>7</sup> See Supplementary Record of Claim, dated October 6, 2021, at GD 3-52.

<sup>8</sup> See Claimant's arguments dated March 12, 2024, at AD 3-1.

<sup>9</sup> See Claimant's arguments dated March 12, 2024, at AD 3-1.