



Citation: *SL v Canada Employment Insurance Commission*, 2024 SST 187

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

# **Leave to Appeal Decision**

**Applicant:** S. L.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated December 8, 2023  
(GE-22-3415)

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**Tribunal member:** Pierre Lafontaine

**Decision date:** February 27, 2024

**File number:** AD-23-1123

## Decision

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

## Overview

[2] The Applicant (Claimant) made a renewal application for Employment Insurance (EI) benefits on January 11, 2021. He received benefits from the week beginning January 10, 2021, to September 25, 2021.

[3] In November 2021, the Respondent (Commission) received a *Record of Employment* (ROE) relating to the Claimant's employment from March 3 to 28, 2021. The Commission reviewed the Claimant's claim for benefits and decided that he was disqualified from receiving benefits for voluntarily leaving his employment without just cause on March 28, 2021.

[4] The Commission sent the Claimant a decision letter dated December 16, 2021, telling him about the disqualification. A notice of debt was also sent to him on December 18, 2021, since the disqualification caused an overpayment of benefits that he would have to repay.

[5] On July 28, 2022, the Claimant asked the Commission to reconsider all decisions made on claims he had made between 2015 to 2021.

[6] On September 23, 2022, the Commission refused to reconsider the decision of December 16, 2021, because the Claimant was making the request outside of the 30-day limit for requesting reconsideration. The Commission found that the reasons he had given for the delay in asking for the decision to be reconsidered did not meet the requirements of the *Reconsideration Request Regulations* (RR Regulations). The Claimant then proceed to appeal to the General Division of the Tribunal.

[7] The General Division determined that the Commission did not act judicially when it did not consider that the Claimant had not received communication of the decision

letter in December 2021, since he had changed address. It found that he received communication of the December 16, 2021, on March 21, 2022.

[8] The General Division found that the Claimant filed his request for reconsideration on July 28, 2022. It found that he was late and that he did not have a reasonable explanation for the delay between March 21, 2022, and July 28, 2022. It determined that not knowing the breakdown of his debt did not prevent him from making a request for reconsideration within the allowed time. The General Division concluded that the 30-day deadline for requesting reconsideration could not be extended.

[9] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. He submits that he gave enough reasons to show why he had sent his reconsideration request late. He then reiterated what he said to the General Division.

[10] I asked the Claimant to explain in detail his grounds of appeal. He answered that no grounds of appeal mentioned in the law apply to his case. He nonetheless requested that I render a decision on his leave to appeal application.

[11] I must decide whether there is some reviewable error of the General Division upon which the appeal might succeed.

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

## **Issue**

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

## **Analysis**

[14] 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.

[15] 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.

[16] Therefore, before I can grant leave, 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 arguably succeed?**

[17] The Claimant submits that he gave enough reasons to show why he had sent his reconsideration request late. He then reiterated what he said to the General Division. He later submitted that no grounds of appeal mentioned in the law apply to his case.

[18] The General Division had to decide whether the Commission exercised its discretion in a judicial manner when it denied the Claimant's request to extend the 30-day reconsideration period.<sup>1</sup>

[19] The General Division correctly indicated that the Commission may allow a longer period to make a request for reconsideration of a decision if the Commission is satisfied

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<sup>1</sup> Section 112 of the *Employment Insurance Act*.

that there is a reasonable explanation for requesting a longer period and the person has demonstrated a continuing intention to request a reconsideration.<sup>2</sup>

[20] The General Division correctly stated that a claimant must meet all conditions for the Commission to accept the late reconsideration request.

[21] The General Division correctly stated that when the Commission refuses a late request for reconsideration, it must show that it used its discretionary powers properly.<sup>3</sup>

[22] The General Division determined that the Commission did not act judicially when it did not consider that the Claimant had not received communication of the decision letter in December 2021, since he had changed address. It found that he received communication of the December 16, 2021, on March 21, 2022.

[23] The General Division found that the Claimant filed his request for reconsideration on July 28, 2022. It found that he was late and that he did not have a reasonable explanation for the delay between March 21, 2022, and July 28, 2022. It determined that not knowing the breakdown of his debt did not prevent him from making a request for reconsideration within the allowed time. The General Division concluded that the 30-day deadline for requesting reconsideration could not be extended.

[24] I see no reviewable error made by the General Division. It properly applied the facts to the law when it refused to extend the 30-day reconsideration period.

Unfortunately, for the Claimant, an appeal to the Appeal Division is not a new hearing where a party can re-present evidence and hope for a new, favourable outcome.

[25] In his application for leave to appeal, the Claimant has not identified any reviewable errors such as jurisdiction or any failure by the General Division to observe a principle of natural justice. He has not identified errors in law nor identified any erroneous findings of fact which the General Division may have made in a perverse or capricious manner or without regard for the material before it.

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<sup>2</sup> See article 1(1) of the *Reconsideration Request Regulations*.

<sup>3</sup> See *Canada (Attorney General) v Gagnon*, 2004 FCA 351.

[26] 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**

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

Pierre Lafontaine  
Member, Appeal Division