



Citation: *HL v Canada Employment Insurance Commission*, 2024 SST 141

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: H. L.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated November 28, 2023
(GE-23-95)

Tribunal member: Janet Lew

Decision date: February 14, 2024

File number: AD-24-38

Decision

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

Overview

[2] The Applicant, H. L. (Claimant), is seeking leave to appeal the General Division decision on the antedate (backdating issue).¹ The General Division dismissed the Claimant's appeal of her claim for Employment Insurance benefits.

[3] The General Division found that the Claimant was late when she applied for Employment Insurance benefits, two months after she had been suspended from her employment. The General Division determined that if the Claimant wanted to backdate her application, she had to show that she had acted like a reasonable person in her position. The General Division found that this meant she had to show good cause for the delay in applying for Employment Insurance benefits throughout the entire period of the delay.

[4] The General Division found that the Claimant had not shown good cause for the delay. It found that she had not acted like a reasonable person in her position. The General Division concluded that because of this, it could not backdate the Claimant's application as if she had made it earlier.

[5] The Claimant denies that she did not have good cause. She argues that the General made procedural, jurisdictional, legal, and factual errors. In particular, she says that the General Division failed to fully consider the evidence before it.

[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

¹ The Claimant has two other appeals at the Appeal Division. They deal with separate issues: one involves the availability issue, and the other, with misconduct.

arguable case.² If the appeal does not have a reasonable chance of success, this ends the matter.³

[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.

Issues

[8] The issues are as follows:

(a) Is there an arguable case that the General Division made a jurisdictional, procedural, or legal error?

(b) Is there an arguable case that the General Division failed to fully consider the evidence?

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.⁴

[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.⁵

² See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

³ 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.”

⁴ See section 58(1) of the DESD Act.

⁵ See section 58(1)(c) of the DESD Act.

The Claimant does not have an arguable case that the General Division made a jurisdictional, procedural, or legal error

[11] The Claimant does not have an arguable case that the General Division made a jurisdictional, procedural, or legal error. Although the Claimant argues the General Division made these types of errors, she has not identified any.

– Alleged jurisdictional errors

[12] A jurisdictional error would involve the General Division either exceeding its authority or failing to make a decision that it should have made. The Claimant had appealed the reconsideration decision of the Respondent, the Canada Employment Insurance Commission (Commission), on the antedate issue. The General Division addressed the antedate issue. It did not consider any other matters. I am not satisfied that there is an arguable case that the General Division made a jurisdictional error.

– Alleged procedural errors

[13] A procedural error would involve the fairness of the process at the General Division. It is not concerned with whether a party feels that the decision is unjust. 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.

[14] The Claimant does not allege that she did not receive all of the file materials, that she did not receive adequate notice of the hearing, or that she did not know the case that 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 either. I am not satisfied that there is an arguable case that the General Division process was unfair.

– Alleged legal errors

[15] The Claimant has not identified any legal errors. The General Division correctly identified the applicable provisions of the *Employment Insurance Act*. The General

Division also set out how the courts have interpreted and applied these provisions. The General Division cited several leading decisions from the Federal Court of Appeal.

[16] Based on these legal authorities, the General Division determined that a claimant has to prove that they had good cause for the delay during the entire period of the delay and that they qualify for benefits on the earlier day, to get an application backdated.

[17] The General Division also determined that this meant that a claimant has to act as a reasonable and prudent person would have acted in similar circumstances they would also have to show that they took reasonably prompt steps to understand their entitlement to benefits and obligations under the law.

[18] The General Division appropriately set out the applicable legal test for when an antedate can be made. It then appropriately applied the law to the facts.

[19] I am not satisfied that there is an arguable case that the General Division made a legal error.

The Claimant does not have an arguable case that the General Division failed to fully consider the evidence

[20] The Claimant does not have an arguable case that the General Division failed to fully consider all of the evidence. The General Division did not overlook the evidence. It addressed most of the evidence and is presumed to have considered all of it.

[21] The Claimant says that she had a legitimate excuse for her delay in applying for benefits. Initially, the Claimant believed that she would not be entitled to receive Employment Insurance benefits. She saw media reports that the Commission was not paying benefits to claimants like her. These were claimants whose employers placed them on leaves of absences for not complying with their vaccination policies. She learned that other unvaccinated claimants had not received benefits.

[22] The Claimant wanted to be certain that she was entitled to receive benefits before she applied. She had a lot of questions about the vaccine: whether it was legal,

constitutional, ethical, scientific, or reasonable. She questioned whether the vaccination policies were politically driven. She visited several websites. She read case law.

[23] The Claimant was also unfamiliar with Employment Insurance rules. But she had other commitments. Along with her family obligations, she had financial and mental stress, in connection with her employer's vaccination policy. They all contributed to the delay.

[24] Plus, the Claimant had to speak with her union about filing a grievance, to try to regain her job. She focused on getting her job back, rather than pursuing her Employment Insurance claim.

[25] The Claimant says that if the Commission realized that the vaccine mandate was illegal, and if the media had reported that unvaccinated employees were entitled to receive benefits, she would have immediately applied for benefits. But, as it was, she relied on what she says was misleading information from the Commission and the media.

[26] The Claimant argues that the General Division overlooked all of these considerations. However, the General Division addressed these considerations, other than mentioning the Claimant's family obligations, her stresses, and her efforts at regaining her job. The General Division acknowledged the Claimant's reasons but found that waiting while she conducted her own research rather than contacting Service Canada did not show that she acted like a reasonable person would have acted.

[27] Essentially, the Claimant is asking for a reassessment of her case. But that is a not a proper ground of appeal under the *Department of Employment and Social Development Act*. I cannot reassess the evidence or reweigh the factors when assessing applications for leave to appeal.⁶

⁶ In a case called *Tracey v Canada (Attorney General)*, 2015 FC 1300, the Federal Court said that a reassessment is beyond the jurisdiction of the Appeal Division.

[28] As the Federal Court said in another case, called *Hussein*,⁷ the “weighing and assessment of evidence lies at the heart of the [General Division’s] mandate and jurisdiction. Its decisions are entitled to significant deference.”

[29] The Claimant also brings up the fact that she had family obligations and stresses, and was trying to get her job back. The General Division did not specifically mention these. However, the General Division is not required to address all of the evidence before it. A decision-maker is presumed to have considered all of the evidence. As the Federal Court has held, a decision-maker expresses only the most important factual findings and justifications for them.⁸

[30] Even so, these considerations still would not have shown that the Claimant had acted like a reasonable person.

[31] If the Claimant made enquiries such as how to go about filing a grievance, conducted research, and read case law, then she should have been able to contact Service Canada to find out about her rights and obligations. But as the Claimant says, she prioritized getting her job back over finding out about Employment Insurance. It is understandable that she would have made that a priority. But it still does not show that she acted like a reasonable person where her Employment Insurance benefits are concerned.

[32] I am not satisfied that there is an arguable case that the General Division failed to fully consider the evidence.

Conclusion

[33] 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

⁷ See *Hussein v Canada (Attorney General)*, 2018 FC 1417.

⁸ See *Canada (Attorney General) v South Yukon Forest Corporation*, 2012 FCA 165.