



Citation: *AS v Canada Employment Insurance Commission*, 2024 SST 395

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant: A. S.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated February 6, 2024
(GE-23-3197)

Tribunal member: Stephen Bergen

Decision date: **April 19, 2024**

File number: AD-24-145

Decision

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

Overview

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

[3] She applied for EI benefits in June 2022 but asked the Respondent, the Canada Employment Insurance Commission (Commission), to treat her application as though it had been made on November 28, 2021, just after she lost the second of her two jobs. This is called “antedating” a claim. The Claimant had difficulty getting her employers to issue her Records of Employment (ROE) and said that she thought she needed the ROEs to apply for benefits.

[4] The Commission refused to antedate. It did not accept that the Claimant had “good cause” for delaying her application. When the Claimant asked it to reconsider, it would not change its decision.

[5] The Claimant appealed to the General Division of the Social Security Tribunal (Tribunal). The General Division agreed with the Commission that the Claimant did not have good cause for the delay, but adjusted the date that she applied for benefits from June 6, 2022, to June 8, 2022.

Issue

[6] Is there an arguable case that the General Division made an error of procedural fairness?

I am not giving the Claimant permission to appeal

General Principles

[7] For the Claimant's application for leave to appeal to succeed, her reasons for appealing would have to fit within the "grounds of appeal." The grounds of appeal identify the kinds of errors that I can consider.

[8] 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

[9] 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. Other court decisions have equated a reasonable chance of success to an "arguable case."²

Procedural Fairness

[10] The only ground of appeal that the Claimant selected in completing her application to the Appeal Division was the ground of appeal concerned with procedural fairness. However, she did not explain why she thought the General Division made an error of procedural fairness.

[11] The Tribunal wrote to her on March 1, 2024, outlining the grounds of appeal once again, and asking her to explain why she thought the General Division made an error. It gave her a deadline of March 15, 2024.

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.

[12] The Tribunal spoke to the Claimant on March 13, 2024, to remind her of the upcoming deadline. She said she would probably respond by email. The Tribunal sent the Claimant a letter extending the deadline to March 29, 2024.

[13] The Claimant did not respond and has not provided any further explanation for why she was appealing the General Division decision.

– **What does procedural fairness mean?**

[14] Procedural fairness is concerned with the fairness of the process. It is not concerned with whether a party feels that the decision result is fair.

[15] Parties before the General Division have a right to certain procedural protections such as the right to be heard and to know the case against them, and the right to an unbiased decision-maker. This is what is meant by procedural fairness.

– **There is no arguable case that the General Division acted in a way that was procedurally unfair**

[16] The Claimant has not asserted that she did not have a fair chance to prepare for the hearing or that she did not understand what was going on in the hearing. She has not said that the hearing did not give her a fair chance to present her case or to respond to the Commission's case. She has not complained that the General Division member was biased or that she had already prejudged the matter.

[17] When I read the decision and review the appeal record, I do not see that the General Division did anything, or failed to do anything, that causes me to question the fairness of the process.

Important error of fact

[18] I appreciate that the Claimant is unrepresented. She may not have understood precisely what she should argue. Therefore, I searched the record for evidence that

could have been relevant to its finding that the Claimant did not have good cause for the delay, but which the General Division may have ignored or misunderstood.³

[19] Unfortunately for the Claimant, the record does not support an argument that the General Division may have made an important error of fact. The General Division considered the circumstances suggested by the evidence and did not ignore or misunderstand any evidence related to those circumstances.

Conclusion

[20] I am refusing permission to appeal. This means that the appeal will not proceed.

Stephen Bergen
Member, Appeal Division

³ I am following the lead of the Federal Court in decision such as *Karadeolian v. Canada (Attorney General)*, 2016 FC 615.