



Citation: *SM v Canada Employment Insurance Commission*, 2024 SST 137

**Social Security Tribunal of Canada
Appeal Division**

Leave to Appeal Decision

Applicant: S. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated December 1, 2023
(GE-23-2338)

Tribunal member: Stephen Bergen

Decision date: February 14, 2024

File number: AD-24-20

Decision

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

Overview

[2] S. M. is the Applicant. This application concerns his claim for Employment Insurance (EI) benefits, so I will call him the Claimant.

[3] The Claimant could have applied for EI benefits as soon as he stopped working but he waited until June 13, 2022, to apply. He asked the Respondent, the Canada Employment Commission (Commission), to treat his application as though he had made it on February 27, 2022 (or “antedated” to February 27, 2022). The Commission refused, saying that he did not have good cause for the delay. The Claimant asked the Commission to reconsider but it would not change its decision.

[4] Next, the Claimant appealed to the General Division of the Social Security Tribunal. The General Division agreed with the Commission and dismissed his appeal. Now the claimant is asking for leave to appeal the decision of the General Division.

[5] I am refusing leave to appeal. The Claimant has not made out an arguable case that the General Division made important error of fact.

Issues

[6] Did the General Division make an error of jurisdiction?

[7] Did the General Division make an important error of fact by ignoring the Claimant’s evidence of a mental health condition?

I am refusing leave to appeal

General Principles

[8] For the Claimant's application for leave to appeal to succeed, his 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.

[9] 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

[10] 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

Error of jurisdiction

[11] In his initial application to the Appeal Division, the Claimant indicated that he believed the General Division made an error of jurisdiction.

[12] However, the nature of the Claimant's concern with the General Division's jurisdiction is unclear. When he explained why he was appealing, he focused on his argument that he had been stressed at the time. He said that his application was late because he had been experiencing headaches and sleeplessness.

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.

[13] An error of jurisdiction is where the General Division fails to decide an issue that it is required to decide, or where it decides an issue that it had no power to decide.

[14] The General Division has jurisdiction to consider the issues arising from the Commission's reconsideration decision. It must consider every issue in the reconsideration decision, but it cannot consider any other issues.

[15] There is no arguable case that the General Division made an error of jurisdiction.

[16] The only issue in the reconsideration decision was whether the Claimant could have his claim antedated. To decide that issue, the General Division had to consider whether he had good cause for the entire period of the delay. If it found he had good cause, it would have had to decide whether he would have qualified for benefits if his claim had started on the earlier date.

[17] The General Division found that the Claimant did not have good cause. Because of this, it did not need to consider if he would have qualified on the earlier date. There is no arguable case that it made a jurisdictional error. It considered only those issues it was permitted to consider and considered all the issues it needed to consider.

Important error of fact

[18] On January 17, 2024, I wrote to the Claimant to ask him again why he was appealing to the Appeal Division. I explained the grounds of appeal that I may consider.

[19] In his February 8, 2024 response, the Claimant said that the General Division made an important error of fact. He spoke about how he had told the General Division about what was going on in his life during the period of delay and about how it affected his medical health. He emphasized that he had provided a sleeping pill prescription as evidence.

[20] There is no arguable case that the General Division made an error of fact.

[21] The General Division did not accept that the Claimant had taken reasonably prompt steps to discover what he needed to do to get benefits earlier, and it did not

accept that his stressful circumstances prevented him from doing so. It referred to the Claimant's prescription evidence, but it did not accept that this showed he could not have acted promptly. It found that the prescription showed that the Claimant could not sleep in December 2021.

[22] The General Division also referred to the Claimant's various difficult and stressful circumstances, but it nonetheless found that the Claimant did not have good cause for the delay. It considered the Claimant's evidence that he had delayed his application while he was trying to find other work, that he was trying to qualify for a mortgage, and that he had trouble sleeping around the time of his December 2021 prescription.

[23] The General Division did not disbelieve the Claimant that he was dealing with these various circumstances or that they were stressful: It just found that none of these circumstances were so "exceptional" that they excused him from taking prompt steps to look into his entitlement to EI benefits.

[24] The Appeal Division can only consider whether the General Division made one of the errors described in the grounds of appeal. It has no authority to reweigh or re-evaluate the evidence to reach a different conclusion than that of the General Division.³

[25] Furthermore, the General Division's conclusion that none of the Claimant's circumstances were "exceptional" is what is known as a question of mixed fact and law. It reached its conclusion by applying settled principles of law to the facts.⁴ The Federal Court of Appeal has stated that the Appeal Division has no jurisdiction to consider errors of mixed fact and law.⁵

³See for example: *Hideq v Canada (Attorney General)*, 2017 FC 439, *Parchment v Canada (Attorney General)*, 2017 FC 354, *Johnson v Canada (Attorney General)*, 2016 FC 1254, *Marcia v Canada (Attorney General)*, 2016 FC 1367.

⁴ See *Canada (Attorney General) v. Caron*, A-395-85; *Canada (Attorney General) v Somwaru*, 2010 FCA 336.

⁵ *Quadir v. Canada (Attorney General)*, 2018 FCA 21.

[26] I appreciate that the Claimant does not agree with how the General Division evaluated the evidence or with its conclusions. But the Claimant has not pointed to any evidence that the General Division overlooked or misunderstood. Nor has he made a case that its conclusions were unsupported by the evidence.

Conclusion

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

Stephen Bergen
Member, Appeal Division