



Citation: *MM v Canada Employment Insurance Commission*, 2024 SST 172

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: M. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated January 17, 2024
(GE-23-3327)

Tribunal member: Solange Losier

Decision date: February 23, 2024

File number: AD-24-73

Decision

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

Overview

[2] M. M. is the Claimant in this case. He applied for Employment Insurance (EI) sickness benefits on July 17, 2023.¹ He asked the Canada Employment Insurance Commission (Commission) to backdate his EI claim for sickness benefits to an earlier date, February 17, 2019 (this is called “antedating” your claim).²

[3] The Commission denied the Claimant’s request to antedate his claim from February 17, 2019 to July 7, 2023 because he wasn’t able to show that he had good cause for the delay in applying for EI benefits.³

[4] The General Division came to the same conclusion.⁴ It decided that the Claimant hadn’t shown he had good cause throughout the entire period of delay. Because of that, his EI application could not be antedated to the earlier date.

[5] The Claimant is now asking for permission to appeal the General Division decision to the Appeal Division.⁵ He argues that the General Division made an important error of fact.

[6] I am denying the Claimant’s request for permission to appeal because there is no reasonable chance of success.

¹ See application for Employment Insurance (EI) sickness benefits at pages GD3-43 to GD3-52.

² See Claimant’s antedate request at page GD3-53.

³ See Commission’s initial decision at page GD3-56 and reconsideration decision at page GD3-63.

⁴ See General Division decision at pages AD1A-1 to AD1A-7.

⁵ See application to the Appeal Division at pages AD1-1 to AD1-9.

Issue

[7] Is there an arguable case that the General Division made an important error of fact when it decided that the Claimant hadn't shown good cause for the delay in applying for EI sickness benefits?

Analysis

[8] An appeal can proceed only if the Appeal Division gives permission to appeal.⁶ I must be satisfied that the appeal has a reasonable chance of success. There must be some arguable ground that the appeal might succeed.⁷

[9] The possible grounds of appeal to the Appeal Division are that the General Division:⁸

- proceeded in a way that was unfair;
- acted beyond its powers or refused to exercise those powers;
- made an error of law;
- based its decision on an important error of fact.

[10] If the Claimant's appeal has no reasonable chance of success, then I must refuse permission to appeal.⁹

I am not giving the Claimant permission to appeal

– **The Claimant says that the General Division made an important error of fact**

[11] In the Claimant's application to the Appeal Division, he argues that the General Division made an important error of fact.

⁶ See section 56(1) of the *Department of Employment and Social Development Act* (DESD Act).

⁷ See *Osaj v Canada (Attorney General)*, 2016 FC 115, at paragraph 12.

⁸ The relevant errors are formally known as "grounds of appeal." They are listed under section 58(1) of the DESD Act. These errors are also explained on the application to the Appeal Division, see page AD1- 5.

⁹ See section 58(2) of the DESD Act.

[12] I have summarized the Claimant's arguments to the Appeal Division as follows:¹⁰

- He was denied [benefits] because he didn't attempt to claim the monies in a reasonable time, but this is incorrect. When he claimed medical EI benefits in 2021, he made attempts to claim benefits from 2019, but was not given proper assistance by Service Canada agents on how to handle his antedate claim.
- He received a postdated payment for EI benefits, but that occurred because Service Canada's delay in service during Covid-19.
- He had to wait eight months for payments, which resulted in a lump sum and he had many bills that needed to be paid.
- Many points are incorrect, and Service Canada was negligent in processing his claims from 2020 to present day.

[13] An error of fact happens when the General Division has "based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it."¹¹

[14] This involves considering some of the following questions:¹²

- Does the evidence squarely contradict one of the General Division's key findings?
- Is there no evidence that could rationally support one of the General Division's key findings?
- Did the General Division overlook critical evidence that contradicts one of its key findings?

¹⁰ See page AD1-4.

¹¹ See section 58(1)(c) of the DESD Act.

¹² This is a summary of the Federal Court of Appeal's decision in *Walls v Canada (Attorney General)*, 2022 FCA 47 at paragraph 41.

[15] This means that I can intervene if the General Division based its decision on an important mistake about the facts of the case. Not all errors of fact will allow me to intervene. An error of fact needs to be important enough that the General Division relied on it to make a finding that impacted the outcome of the decision.

– **There is no arguable case that the General Division based its decision on an important error of fact**

[16] The *Employment Insurance Act* (EI Act) says in order to have your application antedated, you have to prove that you had good cause for the entire period of delay and that you qualified for EI benefits on the earlier date.¹³

[17] Claimants can show good cause by proving that they have done what a reasonable and prudent person would have done in the same circumstances throughout the entire period of delay.¹⁴

[18] Unless there are exceptional circumstances, a reasonable person is expected to take reasonably prompt steps to understand their entitlement to benefits and their obligations under the EI Act.¹⁵

[19] The General Division set out the correct legal test to be applied in its decision.¹⁶

[20] The General Division had to decide whether the Claimant had good cause for the delay in applying for EI benefits for the entire period of delay. In this case, it determined that the period of delay ran from February 18, 2019 to July 17, 2023.¹⁷

[21] The General Division decided that the Claimant did not have good cause for the entire period of delay.¹⁸ It considered his circumstances and reasons for the delay in

¹³ See section 10(4) of the EI Act.

¹⁴ See *Canada (Attorney General) v Burke*, 2012 FCA 139, at paragraph 6.

¹⁵ See *Canada (Attorney General) v Kaler*, 2011 FCA 266 at paragraph 4 and *Canada (Attorney General) v Kaler*, 2011 FCA 266, at paragraph 11.

¹⁶ See paragraphs 8, 9, 10, 12 and 13 of the General Division decision.

¹⁷ See paragraphs 3 and 11 of the General Division decision.

¹⁸ See paragraph 21 of the General Division decision.

applying for EI benefits but found that they were not exceptional and did not excuse his failure to take reasonably prompt steps.¹⁹

[22] The General Division found as a fact that the Claimant had waited more than two years before asking to receive EI benefits even though he knew about EI benefits and antedating in January 2021.²⁰

[23] The General Division also found that the Claimant could have looked into EI benefits and called Service Canada to inquire about benefits when he returned to work between June 2019 and August 2020. It noted that even though he was fighting his employer for his disability benefits, he could still have made a claim for EI benefits while he was waiting.²¹

[24] The General Division rejected the Claimant's argument that the Commission should have followed up with him when he told them he was in sick 2019.²² It noted that the Commission did provide evidence that it tried to reach him but had difficulty. In any event, it said that it was his responsibility to follow up and complete the necessary paperwork and not the Commission's.

[25] It is not arguable that the General Division based its decision on an important error of fact. It considered the Claimant's circumstances and reasons but rejected them, finding that he didn't have good cause for the entire period of delay. Its key findings are consistent with the evidence.

[26] Even if he didn't get proper assistance from Service Canada agents in 2021 as claimed, the General Division already found that once he knew about EI benefits and the option to antedate in January 2021, he still waited until July 2023 to apply.

[27] The Claimant says that he waited eight months and received a lump sum from Service Canada. He received a postdated payment for EI benefits because of Service

¹⁹ See paragraph 21 of the General Division decision.

²⁰ See paragraph 20 of the General Division decision.

²¹ See paragraph 21 of the General Division decision.

²² See paragraph 21 of the General Division decision.

Canada's delay during Covid-19. He says Service Canada was negligent in processing his claims from 2020 to present day.

[28] The General Division has no authority to expedite EI payments or address any complaints about Service Canada's conduct. This is not a ground of appeal.²³ If the Claimant has concerns about Service Canada's conduct or delay in processing his claim, he can submit a complaint to Service Canada's *Office for Client Satisfaction*.

[29] The Claimant's arguments to the Appeal Division are focused on rearguing his case because he disagrees with the outcome. The Appeal Division has a limited role, so I cannot intervene in order to reweigh the evidence about the application of settled legal principles to the facts of the case.²⁴

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

– **There are no other reasons for giving the Claimant permission to appeal**

[31] I reviewed the file, examined the decision under appeal and did not find any key evidence that the General Division might have ignored or misinterpreted.²⁵

Conclusion

[32] This appeal does not have a reasonable chance of success. For that reason, permission to appeal is refused. This means that the appeal will not proceed.

Solange Losier
Member, Appeal Division

²³ See section 58(1) of the DESD Act.

²⁴ See *Garvey v Canada (Attorney General)*, 2018 FCA 118, at paragraph 11.

²⁵ See *Karadeolian v Canada (Attorney General)*, 2016 FC 615, which recommends doing such a review.