



Citation: *MV v Canada Employment Insurance Commission*, 2024 SST 178

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

# **Leave to Appeal Decision**

**Applicant:** M. V.

**Respondent:** Canada Employment Insurance Commission

---

**Decision under appeal:** General Division decision dated December 12, 2023  
(GE-23-2858)

---

**Tribunal member:** Pierre Lafontaine

**Decision date:** February 26, 2024

**File number:** AD-24-55

## Decision

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

## Overview

[2] The Applicant (Claimant) was told he had an overpayment in March or April 2004. He paid the amount owing at that time. On July 27, 2023, some 19 years later, the Claimant asked the Respondent (Commission) to reconsider its March 2004 decision.

[3] The Commission decided his request for reconsideration was late and refused to reconsider the March 1, 2004, decision. The Claimant appealed to the General Division.

[4] The General Division determined that the Claimant was late in requesting reconsideration of the March 1, 2004, decision. It found that the Commission did not act judicially when it decided that the appeal had no reasonable chance of success. Nonetheless, it concluded that the Claimant did not have a reasonable explanation for the delay and that he had not showed a continued intention to seek reconsideration of the March 2004 decision. It refused to grant an extension of time to make a request for reconsideration.

[5] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. He submits that the Service Canada officer told him they had miscalculated. They sent him a letter several months later after he had paid. He submits the correct procedure was not followed. His proves that the Commission was wrong. He never received the letter dated November 2004.

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

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

## Issue

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

## Analysis

[9] 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.

[10] 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.

[11] 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?**

[12] The Claimant submits that the Service Canada officer told him they had miscalculated. They sent him a letter several months later after he had paid. He submits

the correct procedure was not followed. This proves that the Commission was wrong. He never received the letter dated November 2004.

[13] The Claimant appealed to the General Division a decision rendered by the Commission dated September 27, 2023.<sup>1</sup> In the disputed decision, the Commission refused to reconsider its decision dated March 1, 2004.<sup>2</sup>

[14] 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>3</sup>

[15] 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 that there is a reasonable explanation for requesting a longer period and the person has demonstrated a continuing intention to request a reconsideration.<sup>4</sup>

[16] The Commission must also be satisfied that the request for reconsideration has a reasonable chance of success, and that no prejudice would be caused to the Commission or a party by allowing a longer period to make the request, if the request for reconsideration is made after the 365-day period after the day on which the decision was communicated to the person.<sup>5</sup>

[17] The General Division correctly stated that a claimant must meet all four conditions for the Commission to accept the late reconsideration request when the request is more than 365 days late.

[18] 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>6</sup>

---

<sup>1</sup> See GD2-1.

<sup>2</sup> See GD3-10.

<sup>3</sup> Section 112 of the *Employment Insurance Act*.

<sup>4</sup> See article 1(1) of the *Reconsideration Request Regulations*.

<sup>5</sup> See article 1(2) (a) of the *Reconsideration Request Regulations*.

<sup>6</sup> See *Canada (Attorney General) v Gagnon*, 2004 FCA 351.

[19] The General Division determined that the Claimant received in April 2004 communication of the decision of March 1, 2004. He filed his reconsideration request on July 27, 2023, over 19 years after the Commission communicated to him its initial decision.

[20] The General Division found that the Commission did not act judicially when it decided that the appeal had no reasonable chance of success. Nevertheless, it concluded that the Claimant did not have a reasonable explanation for the delay and that he had not showed a continued intention to seek reconsideration of the March 1, 2004, decision. It refused to grant an extension of time to make a request for reconsideration.

[21] The General Division considered that the Claimant became aware of a possible error after he started working for Service Canada in 2023. This is why he did not challenge the decision earlier. In his application for reconsideration, the Claimant indicates that he regrets not appealing at the time the decision of April 2004.<sup>7</sup>

[22] The General Division found that the Claimant did not have a reasonable explanation for the delay in making the request for reconsideration and that he did not demonstrate a continuing intention to request the reconsideration. It therefore refused to grant an extension of time to make a request for reconsideration.

[23] 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.

[24] The Claimant submits that he never received the November 16, 2004, decision, and that the Commission did not follow the proper procedure. However, this is not the decision he requested for reconsideration in July 2023. It is also not the decision he appealed to the General Division. In the Claimant's application to appeal to the General Division, he clearly appealed the decision of September 27, 2023, that refers to the March 1, 2004, decision.

---

<sup>7</sup> See GD3-8.

[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.

[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