



Citation: *JS v Canada Employment Insurance Commission*, 2024 SST 442

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

# **Leave to Appeal Decision**

**Applicant:** J. S.

**Respondent:** Canada Employment Insurance Commission

---

**Decision under appeal:** General Division decision dated February 19, 2024  
(GE-24-98)

---

**Tribunal member:** Melanie Petrunia

**Decision date:** April 28, 2024

**File number:** AD-24-217

## **Decision**

[1] The Applicant, J. S. (Claimant) applied for employment insurance (EI) benefits on March 24, 2023, but asked that the application be treated as though it was made earlier.

[2] The Respondent, the Canada Employment Insurance Commission (Commission) refused the Claimant's request. It decided that he hadn't shown good cause for the delay in applying.

[3] The Claimant's appeal to the General Division was dismissed. The General Division found that the Claimant did not show that he had good cause for the delay in applying for benefits so his application could not be treated as though it was made earlier.

[4] The Claimant is now asking to appeal the General Division decision to the Tribunal's Appeal Division. However, he needs permission for his appeal to move forward. The Claimant argues the General Division based its decision on important factual errors.

[5] I have to decide whether there is some reviewable error of the General Division on which the appeal might succeed. I am refusing leave to appeal because the Claimant's appeal has no reasonable chance of success.

## **Issue**

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

## **I am not giving the Claimant permission to appeal**

[7] The legal test that the Claimant needs to meet on an application for leave to appeal is a low one: Is there any arguable ground on which the appeal might succeed?<sup>1</sup>

[8] To decide this question, I focused on whether the General Division could have made one or more of the relevant errors (or grounds of appeal) listed in the *Department of Employment and Social Development Act* (DESD Act).<sup>2</sup>

[9] An appeal is not a rehearing of the original claim. Instead, I must decide whether the General Division:

- a) failed to provide a fair process;
- b) failed to decide an issue that it should have, or decided an issue that it should not have;
- c) based its decision on an important factual error;<sup>3</sup> or
- d) made an error in law.<sup>4</sup>

[10] Before the Claimant can move on to the next stage of the appeal, I have to be satisfied that there is a reasonable chance of success based on one or more of these grounds of appeal. A reasonable chance of success means that the Claimant could argue his case and possibly win. I should also be aware of other possible grounds of appeal not precisely identified by the Claimant.<sup>5</sup>

---

<sup>1</sup> This legal test is described in cases like *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12 and *Ingram v Canada (Attorney General)*, 2017 FC 259 at para 16.

<sup>2</sup> DESD Act, s 58(2).

<sup>3</sup> The language of section 58(1)(c) actually says that the General Division will have erred if it bases its decision on a finding of fact that it makes in a perverse or capricious manner or without regard for the material before it. The Federal Court has defined perverse as “willfully going contrary to the evidence” and defined capricious as “marked or guided by caprice; given to changes of interest or attitude according to whim or fancies; not guided by steady judgment or intent” *Rahi v Canada (Minister of Citizenship and Immigration)* 2012 FC 319.

<sup>4</sup> This paraphrases the grounds of appeal.

<sup>5</sup> *Karadeolian v Canada (Attorney General)*, 2016 FC 615; *Joseph v Canada (Attorney General)*, 2017 FC 391.

– **The General Division decision**

[11] The General Division considered whether the Claimant could antedate (or backdate) his March 24, 2023 claim to December 25, 2022. The General Division had to decide whether the Claimant had shown “good cause” for filing his application for EI benefits late for the entire period of the delay.<sup>6</sup>

[12] To establish good cause, the Claimant has to show that he did what a reasonable person would have done in similar circumstances to satisfy himself of his rights and obligations under the law.<sup>7</sup> This includes an obligation to take reasonably prompt steps to determine if they qualify for benefits.

[13] The Claimant stopped working on December 23, 2022, due to a shortage of work.<sup>8</sup> He said that his employer initially told him that he would only be off for two weeks.<sup>9</sup> He contacted Service Canada in January 2023 and was told that he needed a Record of Employment (ROE) to apply for benefits.<sup>10</sup> The Claimant received the ROE around January 20, 2023.<sup>11</sup>

[14] The Claimant told the General Division that he was told by a Service Canada agent that he could apply for benefits anytime and was never told that he should apply within four weeks. He did not know that his employer also sent in an electronic copy of his ROE.<sup>12</sup>

[15] The Claimant was working for the employer sporadically and did not know if he would work while receiving EI benefits.<sup>13</sup> In the first week of March 2023, his employer

---

<sup>6</sup> See section 10(4) of the *Employment Insurance Act* (EI Act).

<sup>7</sup> See *Canada (Attorney General) v Kaler*, 2011 FCA 266 at paragraph 4 and *Canada (Attorney General) v Somwaru*, 2010 FCA 336 at paragraphs 15 and 16.

<sup>8</sup> General Division decision at para 16.

<sup>9</sup> General Division decision at para 18.

<sup>10</sup> General Division decision at para 19.

<sup>11</sup> General Division decision at para 20.

<sup>12</sup> General Division decision at para 21.

<sup>13</sup> General Division decision at para 22.

told him that he would return to full time hours the following week, but this did not happen.<sup>14</sup> He was supporting himself with his savings during this period.

[16] The General Division found that the Claimant did not prove that he had good cause for the delay in applying for benefits. It considered the fact that the Claimant was told he needed an ROE in order to apply for benefits. It found that a reasonable and careful person, in the Claimant's circumstances, would have taken reasonably prompt steps to apply for benefits after receiving the ROE, regardless of whether an agent told him that he could apply at any time.<sup>15</sup>

[17] The General Division also found that the Claimant should have taken steps to learn about his rights and obligations in relation to working while receiving benefits. It found that there were no exceptional circumstances that prevented the Claimant from enquiring about his rights and obligations, noting that he spoke to agents in January, February and March 2023.<sup>16</sup>

[18] In his application for leave to appeal, the Claimant argues that the General Division based its decision on important factual errors. He says that he acted as a reasonable and prudent person in his call with an agent on January 26, 2023, when he was told that he could apply at any time. He says that he contacted the experts and was not told about a four-week window, or that his ROE would be sent electronically to the Commission. He claims that he would have applied earlier if he had known.<sup>17</sup>

[19] The Claimant also argues that he was helping his father at the time, who needed assistance after a surgery and was undergoing IVF with his wife. A co-worker told him that he had issues with EI a few years earlier when he was working while receiving benefits. He did not want to do anything wrong.<sup>18</sup>

---

<sup>14</sup> General Division decision at para 23.

<sup>15</sup> General Division decision at para 30.

<sup>16</sup> General Division decision at para 31.

<sup>17</sup> AD1-9

<sup>18</sup> AD1-9

– **No arguable case that the General Division erred**

[20] In its decision, the General Division discussed the Claimant's evidence that he contacted Service Canada and was not told that there was a deadline to apply. He would have applied earlier if he had known.<sup>19</sup> It also considered that the Claimant argued he was working sporadically and didn't want to get in trouble.<sup>20</sup>

[21] The General Division acknowledged and considered these arguments. However, it found that the Claimant was told that he needed an ROE to apply, and he should have contacted the Commission after he received his ROE for more information.<sup>21</sup> It also found that the Claimant could have taken steps to inform himself about his rights and obligations in relation to claiming benefits while working sporadically.<sup>22</sup>

[22] I find that there is no arguable case that the General Division failed to consider any relevant evidence or based its decision on any factual errors. The General Division acknowledged and accepted the Claimant's evidence but did not accept that he had good cause for delay. The General Division considered and weighed the evidence when making its finding.

[23] I find that the Claimant's arguments do not have a reasonable chance of success. There is no arguable case that the General Division based its decision on an important mistake about the facts of the case. The General Division applied the proper legal test and took into consideration all relevant evidence.

[24] Aside from the Claimant's arguments, I have also considered the other grounds of appeal. The Claimant has not pointed to any errors of jurisdiction, and I see no evidence of such errors. There is no arguable case that the General Division made any errors of law or failed to follow procedural fairness.

---

<sup>19</sup> General Division decision at para 26.

<sup>20</sup> General Division decision at paras 22 to 24.

<sup>21</sup> General Division decision at para 30.

<sup>22</sup> General Division decision at para 31.

[25] The Claimant has not identified any errors of the General Division upon which the appeal might succeed. As a result, I am refusing leave to appeal.

## **Conclusion**

[26] Permission to appeal is refused. This means that the appeal will not proceed.

Melanie Petrunia  
Member, Appeal Division