



Citation: *MA v Canada Employment Insurance Commission*, 2024 SST 440

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: M. A.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated February 12, 2024
(GE-24-85)

Tribunal member: Melanie Petrunia

Decision date: April 28, 2024

File number: AD-24-197

Decision

[1] The Applicant, M. A. (Claimant) was receiving employment insurance (EI) benefits when she left Canada. She received a partial payment of benefits for the week of March 19 to 25, 2023. About seven weeks later, the Claimant requested a refusal of payment for that week.

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

[3] The Claimant's appeal to the General Division was dismissed. The General Division found that the Claimant did not show that she had good cause for the delay in requesting the payment refusal, for the entire period of delay.

[4] The Claimant is now asking to appeal the General Division decision to the Tribunal's Appeal Division. However, she needs permission for her appeal to move forward. The Claimant argues the General Division failed consider that she has worked for 15 years, and this is her first time using employment insurance.

[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?¹

[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).²

[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;³ or

d) made an error in law.⁴

[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 her case and possibly win. I should also be aware of other possible grounds of appeal not precisely identified by the Claimant.⁵

¹ 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.

² DESD Act, s 58(2).

³ 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.

⁴ This paraphrases the grounds of appeal.

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

– **The General Division decision**

[11] The General Division had to decide whether the Claimant had shown “good cause” for the delay in requesting a payment refusal for the entire period of the delay.⁶

[12] To establish good cause, the Claimant has to show that she did what a reasonable person would have done in similar circumstances to satisfy herself of her rights and obligations under the law.⁷

[13] The Claimant submitted her claimant report online on March 28, 2023, requesting benefits for the period from March 12 to 25, 2023. On May 16, 2023, the Claimant contacted the Commission and said that she did not want to be paid for the week of March 19 to 25, 2023, because she only received partial payment.⁸

[14] The Commission asked the Claimant about the delay in requesting payment refusal and she said that she was not aware that she could make such a request. She only realized that she had received a partial payment when she checked her bank account. The Commission said that the Claimant had three weeks to make the request and did not have good cause for delaying seven weeks.

[15] The General Division considered that the Claimant left Canada to visit friends and family. She didn’t realize the impact on that week of benefits until she returned to Canada. She also explained that she was confused by her bank statements and had lost a number of people to COVID-19 during that time. She eventually learned from a clerk that she could request a payment refusal for that week.⁹

[16] The General Division found that a reasonable person in the Claimant’s circumstances would have checked her bank statement and enquired about the amount she received for the week. The Claimant knew that her benefits would be affected by

⁶ See section 10(5) of the *Employment Insurance Act* (EI Act).

⁷ 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.

⁸ GD4-1

⁹ General Division decision at paras 7 and 8.

her trip outside Canada and should have verified the amount of the partial payment, and her rights and obligations, earlier.

[17] In her application for leave to appeal, the Claimant argues that the General Division made an error of jurisdiction by failing to consider that she has worked for 15 years and this was her first time collecting benefits. She says that it was very difficult to get the right information from the Commission and that she visited Service Canada as well as calling the call center. The Claimant says that you are lucky if you get the right information from the agents.¹⁰

[18] The Claimant argues that she never knew that she only had three weeks to make the request and that she didn't have the opportunity to make the request until seven weeks later because she did not know what her bank account statement said.¹¹

[19] I find that the Claimant's arguments do not have a reasonable chance of success. The Claimant was aware that her benefits would be affected. The General Division considered her arguments concerning her bank account statements and explained why it did not find that this amounted to good cause.¹²

[20] The Claimant's arguments concerning the years she spent working and that it was her first time collecting benefits are not relevant to the issue that the General Division had to determine.

[21] I find that there is no arguable case that the General Division failed to consider any relevant evidence or made an error of jurisdiction. The General Division acknowledged and accepted the Claimant's evidence but did not accept that she had good cause for delay. The General Division considered and weighed the evidence when making its finding. The General Division applied the proper legal test and took into consideration all relevant evidence.

¹⁰ AD1A-1

¹¹ AD1A-1

¹² General Division decision at para 14.

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

[23] 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

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

Melanie Petrunia
Member, Appeal Division