



Citation: *SM v Canada Employment Insurance Commission*, 2024 SST 444

**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 March 18, 2024  
(GE-24-530)

---

**Tribunal member:** Solange Losier

**Decision date:** April 29, 2024

**File number:** AD-24-242

## Decision

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

## Overview

[2] S. M. is the Claimant in this case. She worked as a crossing guard and lunch supervisor. On August 22, 2023, she submitted a renewal claim for Employment Insurance (EI) benefits. She asked the Commission to backdate her EI claim to an earlier date, on July 2, 2023 (this is called antedating your claim).

[3] The Canada Employment Insurance Commission (Commission) refused to antedate her renewal claim to the earlier date.<sup>1</sup> It said that she didn't file it on time and did not show good cause for the delay.

[4] The General Division came to the same conclusion.<sup>2</sup> It decided that the Claimant hadn't shown she had good cause for the delay in making a renewal claim. So, her renewal claim could not be antedated to July 2, 2023.

[5] The Claimant is now asking for permission to appeal the General Division decision to the Appeal Division.<sup>3</sup> She argues that the General Division didn't follow a fair process.

[6] I am denying the Claimant's request for permission to appeal because it has no reasonable chance of success.

---

<sup>1</sup> See Commission's initial decision at page GD3-22 and reconsideration decision at page GD3-60.

<sup>2</sup> See General Division decision at pages AD1A-1 to AD1A-6.

<sup>3</sup> See Application to the Appeal Division at pages AD1-1 to AD1-7.

## Preliminary matter

### – I asked the Claimant for more information

[7] When the Claimant submitted her application to the Appeal Division, she didn't identify the type of error she thinks the General Division made.<sup>4</sup> The Appeal Division can only consider certain types of errors.<sup>5</sup>

[8] I wrote to the Claimant and asked her for more information.<sup>6</sup> The letter listed the types of errors that could be considered under the law. I asked her to explain in detail why she was appealing the General Division decision.

[9] The Claimant replied to my letter arguing that the General Division didn't follow procedural fairness.<sup>7</sup> She says that the General Division did not see that she tried to apply for EI and that she provided proof of being in the country.

## Issue

[10] Is there an arguable case that the General Division didn't follow a fair process?

## Analysis

[11] An appeal can proceed only if the Appeal Division gives permission to appeal.<sup>8</sup>

[12] I must be satisfied that the appeal has a reasonable chance of success.<sup>9</sup> This means that there must be some arguable ground upon which the appeal might succeed.<sup>10</sup>

[13] I can only consider certain types of errors. I have to focus on whether the General Division could have made one or more of the relevant errors (this is called the "grounds of appeal").<sup>11</sup>

---

<sup>4</sup> See page AD1-3.

<sup>5</sup> See section 58(1) of the *Department of Employment and Social Development* (DESD Act).

<sup>6</sup> See Tribunal letter dated April 19, 2024.

<sup>7</sup> See section 58(1)(a) of the DESD Act.

<sup>8</sup> See section 56(1) of the DESD Act.

<sup>9</sup> See section 58(2) of the DESD Act.

<sup>10</sup> See *Osaj v Canada (Attorney General)*, 2016 FC 115.

<sup>11</sup> See section 58(1) of the DESD Act.

[14] The possible grounds of appeal to the Appeal Division are that the General Division:<sup>12</sup>

- 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.

[15] In order to proceed to the next steps, the Claimant's appeal has to have a reasonable chance of success.

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

– **There is no arguable case that the General Division didn't follow a fair process**

[16] Procedural fairness is about the fairness of the process. It includes procedural protections including the right to an unbiased decision-maker, the right of a party to be heard and to know the case against them and to be given an opportunity to respond. If the General Division proceeded in a manner that was unfair, then I can intervene.<sup>13</sup>

[17] The General Division had to decide whether the Claimant could antedate her renewal claim to July 2, 2023.

[18] To do so, the Claimant had to show that she had "good cause" for filing her renewal claim late for the entire period of delay.<sup>14</sup>

[19] To establish good cause, the Claimant has to show that she did what a reasonable person in her situation would have done in similar circumstances to satisfy herself of her rights and obligations under the law.<sup>15</sup>

---

<sup>12</sup> See section 58(1) of the DESD Act.

<sup>13</sup> See section 58(1)(a) of the DESD Act.

<sup>14</sup> See section 10(5) of the *Employment Insurance Act* (EI Act) which deals with "other late claims".

<sup>15</sup> See *Canada (Attorney General) v Kaler*, 2011 FCA 266 at paragraph 4 and *Canada (Attorney General) v Mendoza*, 2021 FCA 36 at paragraphs 13 and 14.

[20] The General Division decided that she did not have good cause for the delay in making her renewal claim because she didn't take reasonably prompt steps to find out what she needed to do to get benefits.<sup>16</sup>

[21] The General Division concluded that a reasonable and prudent person in similar circumstances would have checked with Service Canada promptly to see what the problem was with her renewal claim.<sup>17</sup>

[22] The General Division considered the Claimant's work history and familiarity with the EI benefit program.<sup>18</sup> It said that she could have called Service Canada right away.<sup>19</sup> It found that there was no evidence of exceptional circumstances that excused her from doing so.<sup>20</sup>

[23] The Claimant hasn't pointed out how the General Division erred by not following a fair process.

[24] Even so, I listened to the audio recording from the hearing and reviewed the file to see if the General Division failed to follow a fair process.

[25] The hearing lasted approximately 18 minutes. The audio recording shows that the Claimant had a full and fair opportunity to present her case. The General Division asked her relevant questions throughout the hearing. The Claimant confirmed that she received the documents from the file, so I am satisfied that she knew the case she had to meet.

[26] The Claimant's arguments amount to a disagreement with the outcome. I acknowledge that the Claimant may disagree with the General Division's decision. However, I cannot reweigh the evidence in order to come to a different conclusion for the Claimant.<sup>21</sup> The Appeal Division's mandate is limited to deciding whether the

---

<sup>16</sup> See paragraph 15 of the General Division decision.

<sup>17</sup> See paragraphs 21, 24 and 26 of the General Division decision.

<sup>18</sup> See paragraph 21 of the General Division decision.

<sup>19</sup> See paragraph 22 of the General Division decision.

<sup>20</sup> See paragraph 23 of the General Division decision.

<sup>21</sup> See *Garvey v Canada (Attorney General)*, 2018 FCA 118.

General Division might have made a reviewable error and not whether the result was unfair.<sup>22</sup>

[27] As a result, it is not arguable that the General Division failed to provide a fair process.

– **There are no other reasons to give permission to appeal**

[28] I did not find any relevant evidence that the General Division might have ignored or misinterpreted.<sup>23</sup> As well, the General Division stated and applied the relevant law.

## **Conclusion**

[29] This appeal has no reasonable chance of success.

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

Solange Losier  
Member, Appeal Division

---

<sup>22</sup> See *Marcia v Canada (Attorney General)*, 2016 FC 1367, at paragraph 34.

<sup>23</sup> The Federal Court recommends doing such a review in decisions like *Griffin v Canada (Attorney General)*, 2016 FC 874, and *Karadeolian v Canada (Attorney General)*, 2016 FC 615.