Citation: *DD v Canada Employment Insurance Commission*, 2024 SST 328

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	D. D.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated February 12, 2024 (GE-24-36)

Tribunal member:	Janet Lew
Decision date:	April 3, 2024
File number:	AD-24-189

Decision

[1] Leave (permission) to appeal is refused. The appeal will not be going ahead.

Overview

[2] The Applicant, D. D. (Claimant), is seeking leave to appeal the General Division decision. The General Division found that the Claimant was late when he applied for Employment Insurance regular benefits. He should have filed biweekly reports starting October 9, 2022, and continuing up to August 10, 2023, when he asked the Respondent, the Canada Employment Insurance Commission (Commission), to antedate (backdate) his claims to October 9, 2022.

[3] The General Division found that, as the Claimant did not show that he had good cause for his delay, it could not backdate his claims. This meant that his claims could not be treated as though he had made them earlier.

[4] The Claimant argues that he had good cause for his delay. He states that he was unwell. He was on anti-depressant medication and undergoing counselling for anxiety and depression. He was overwhelmed by a previous claim. These factors affected his ability to file biweekly reports or to enquire into his rights and obligations under the *Employment Insurance Act*.

[5] The Claimant has filed a supporting medical letter with his application. His family doctor is of the opinion that, "due to [the Claimant's] physical and emotional state he filed his EI application late."[1]

[6] The Claimant argues that the General Division made an important factual error without regard for the evidence before it.

[7] Before the Claimant can move ahead with the appeal, I have to decide whether the appeal has a reasonable chance of success. In other words, there has to be an

[1] See family doctor's letter dated March 27, 2024, at AD 1B-9.

arguable case.[2] If the appeal does not have a reasonable chance of success, this ends the matter.[3]

[8] I am not satisfied that the appeal has a reasonable chance of success. Therefore, I am not giving permission to the Claimant to move ahead with the appeal.

Issue

[9] Is there an arguable case that the General Division based its decision on a factual error that it made without regard for the evidence before it?

I am not giving the Claimant permission to appeal

[10] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success. A reasonable chance of success exists if the General Division may have made a jurisdictional, procedural, legal, or a certain type of factual error.[4]

[11] For these types of factual errors, the General Division had to have based its decision on an error that it made in a perverse or capricious manner, or without regard for the evidence before it.[5]

The Claimant does not have an arguable case that the General Division based its decision on a factual error

[12] The Claimant does not have an arguable case that the General Division based its decision on a factual error. The Claimant says that he had mental health issues that caused his delay. However, he did not mention this previously. There simply was no evidence before the General Division that the Claimant had any health issues that affected his ability to file reports. The General Division was unaware that the Claimant had any physical or mental health issues that interfered with his ability to file reports.

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[2] See *Fancy v Canada (Attorney General)*, 2010 FCA 63.
[3] Under section 58(2) of the *Department of Employment and Social Development* (DESD) *Act,* I am required to refuse permission if I am satisfied "that the appeal has no reasonable chance of success."
[4] See section 58(1) of the DESD Act.
[5] See section 58(1)(c) of the DESD Act.

[13] The General Division did not have any of this evidence before it. Indeed, when the Claimant spoke with the Commission on June 23, 2023,[6] and again on November 16, 2023,[7] the Claimant did not mention any health issues. He explained that he was late because he was waiting for a record of employment from his employer. He was uncertain whether he would even receive one.

[14] The Commission asked the Claimant whether there was anything else that prevented him from applying earlier than he did. The Claimant reportedly stated "no." When asked whether he had any barriers that might have contributed to him having difficulties with the Employment Insurance claims process, the Claimant also reportedly stated "no."[8]

[15] The General Division clearly did not overlook evidence of the Claimant's health issues as it did not have any evidence of it. Hence, it cannot be said that the General Division based its decision on an erroneous finding of fact that it made without regard for the evidence before it.

[16] The Claimant would now like to rely on his family doctor's letter to establish that he had good cause for his delay. He is looking for a reassessment based on this new evidence. However, generally the Appeal Division does not accept new evidence regarding Employment Insurance claims.

[17] The courts have consistently held that generally the Appeal Division does not consider new evidence. As the Federal Court of Appeal said in a case called *Gittens*:

> [13] . . . Under the rules set by Parliament, hearings before the Appeal Division are not redos based on updated evidence of the hearing before the General Division. They are instead reviews of General Division decisions based on the same evidence.[9]

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[6] See Supplementary Record of Claim, dated June 23, 2023, at GD 3-16.
[7] See Supplementary Record of Claim, dated November 16, 2023, at GD 3-24.
[8] See Supplementary Record of Claim, dated November 16, 2023, at GD 3-24.
[9] See *Gittens v Canada (Attorney General)*, 2019 FCA 256 at para 13.

[18] The Court of Appeal has set out the circumstances when the Appeal Division may allow new evidence. New evidence can be considered when it provides general background information, shows procedural defects, or exceptionally, in cases where both parties agree that an important document should be considered.[10]

[19] These circumstances do not arise here such as to enable me to consider the Claimant's new evidence.

Conclusion

[20] The appeal does not have a reasonable chance of success. Permission to appeal is refused. This means that the appeal will not be going ahead.

Janet Lew
Member, Appeal Division

[10] See *Sibbald v Canada (Attorney General)*, 2022 FCA 157 at para 39.