



Citation: *HH v Canada Employment Insurance Commission*, 2024 SST 460

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: H. H.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated March 28, 2024
(GE-24-812)

Tribunal member: Stephen Bergen

Decision date: May 1, 2024

File number: AD-24-266

Decision

[1] I am refusing leave (permission) to appeal. The appeal will not proceed.

Overview

[2] H. H. is the Applicant. I will call him the Claimant because this application is about his claim for Employment Insurance (EI) benefits.

[3] The Claimant is a temporary foreign worker. When he lost his job on September 30, 2023, he was concerned that it would be difficult to find other work with his limited work permit. He initially focused on trying to get his employer to take him back. At some point, he went to Service Canada to apply for EI benefits, but someone there told him he should apply online. He finally applied on November 14, 2023, when a Service Canada agent showed him how to complete the online application.

[4] The Claimant asked the Respondent, the Canada Employment Insurance Commission (Commission), to start his claim as of October 1, 2023 (called “antedating” the claim). The Commission refused to antedate because it did not accept that the Claimant had good cause for the delay in his application. The Commission would not change its decision when he asked it to reconsider.

[5] The Claimant appealed to the General Division of the Social Security Tribunal, but the General Division dismissed his appeal. He is now asking for permission to appeal to the Appeal Division.

[6] I am refusing permission to appeal. The Claimant has not made out an arguable case that the General Division made an error of procedural fairness or an error of fact.

Issue

[7] Is there an arguable case that the General Division

- a) made an error of procedural fairness?

- b) made an important error of fact by ignoring evidence of his efforts to apply for benefits?

I am not giving the Claimant permission to appeal

General Principles

[8] For the Claimant's application for leave to appeal to succeed, his reasons for appealing would have to fit within the "grounds of appeal." The grounds of appeal identify the kinds of errors that I can consider.

[9] I may consider only the following errors:

- a) The General Division hearing process was not fair in some way.
- b) 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 (error of jurisdiction).
- c) The General Division based its decision on an important error of fact.
- d) The General Division made an error of law when making its decision.¹

[10] To grant this application for leave and permit the appeal process to move forward, I must find that there is a reasonable chance of success on one or more grounds of appeal. Other court decisions have equated a reasonable chance of success to an "arguable case."²

Procedural Fairness

[11] The only ground of appeal that the Claimant selected in completing his Application to the Appeal Division was the ground of appeal concerned with procedural fairness.

[12] However, he has not made out an arguable case that the General Division acted in a way that was procedurally unfair.

¹ This is a plain-language version of the grounds of appeal. The full text is in section 58(1) of the *Department of Employment and Social Development Act* (DESDA).

² See *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; and *Ingram v Canada (Attorney General)*, 2017 FC 259.

[13] Procedural fairness is concerned with the fairness of the process. Parties before the General Division have a right to certain procedural protections such as the right to be heard and to know the case against them, and the right to an unbiased decision-maker. Procedural fairness is not concerned with whether a party feels that the decision **result** is fair.

[14] The Claimant attended his General Division hearing. He has not said that he did not have a fair chance to prepare for the hearing or that he did not know what was going on in the hearing. He has not said that the hearing did not give him a fair chance to present his case or to respond to the Commission's case. He has not complained that the General Division member was biased or that she had already prejudged the matter.

[15] When I read the decision and review the appeal record, I do not see that the General Division did anything, or failed to do anything, that causes me to question the fairness of the process.

Important error of fact

[16] The Application to the Appeal Division form also asked the Claimant to explain why he believed the General Division made an error. Although the Claimant selected the error concerned with procedural fairness, his explanation suggested that he believed the General Division made an important error of fact.

[17] The Claimant wrote that the General Division ignored the fact that he tried to apply for benefits in-person on October 20, 2024, and that he was turned away without receiving assistance.

[18] There is no arguable case that the General Division ignored the Claimant's evidence.

[19] The General Division understood the Claimant's evidence that he tried to apply in-person and was told to apply online, and that he was given no help to complete the online application. It acknowledged his argument that the Commission should have

agreed to take his application for benefits in-person when he first visited the Service Canada office.³

[20] The General Division did not make a specific finding on the date that the Claimant went to Service Canada to apply initially, but this is unsurprising. The General Division expressed concern that the Claimant's dates and timelines changed overtime.⁴ At least part of that concern could be justified by the uncertainty of the Claimant's evidence, and its contradictions, when it comes to the date that he visited Service Canada to apply.⁵

[21] The Claimant told the Commission that he went to Service Canada to submit his application at the "beginning of October."⁶ However, his Notice of Appeal said he visited Service Canada "within four weeks" of when he lost his job (which was September 30, 2023 according to his application and his Record of Employment).⁷ The Notice of Appeal also included a more detailed explanation in which he said that he visited Service Canada "to apply for EI (several times around October 20, 2023, onwards)."⁸ The Claimant's testimony before the General Division was also uncertain. He said that he went to Service Canada to apply "In October, sometime mid-October, I will say."⁹ He later testified that "maybe I could say on Monday, October 20." The member pointed out that October 20, 2023, was a Friday, and the Claimant then said that he "might have" gone to Service Canada on October 20, and that he "must have" gone to Service Canada "anytime" between the 16th and the 20th. He said his "best guess" was October 20.¹⁰ He also said he "might have" also called Service Canada on October 23 and "must have" gone back to get a code (to access his MyCanada account) on the same day.¹¹

³ See para 18 of the General Division decision.

⁴ See footnote 9 of the General Division decision.

⁵ See para 6 of the General Division decision.

⁶ See GD3-41.

⁷ See GD2-5.

⁸ See GD2-6 and GD2-9.

⁹ Listen to the audio record of the General Division hearing at timestamp 6:50.

¹⁰ Listen to the audio record of the General Division hearing at timestamp 11:45 to 12:55.

¹¹ Listen to the audio record of the General Division hearing at timestamp 13:10 to 13:25.

[22] Regardless of the date, the General Division clearly understood that the Claimant made an initial visit to Service Canada at some point between when he lost his job and when he finally applied.

[23] The General Division makes an important error of fact when it bases its decision on a finding that ignores or misunderstands relevant evidence, or on a finding that does not follow rationally from the evidence.¹²

[24] The General Division based its decision on a finding that the Claimant did not do what a reasonable and prudent person would do. This finding relied on evidence of the Claimant's inaction between the time that his employer let him go and his first visit to Service Canada, and on his inaction between his first enquiry at Service Canada and when he finally applied in mid-November 2023.

[25] As the General Division noted, the Claimant admitted he had not tried to find the correct form to complete online, and he admitted that he did not call the Commission to ask for help or to enquire about his rights. The Claimant also acknowledged that nothing prevented him from making further enquiries into how to make a claim during the period of his delay.

[26] I appreciate that the Claimant may believe that a "reasonable and prudent person" would not have acted any differently than he did. He may disagree with how the General Division weighed the evidence or with the conclusions that the General Division reached from the evidence. However, the General Division is the primary finder of fact. This means that it is the General Division's job to weigh the evidence and reach a conclusion.

[27] The Appeal Division has no ability to re-evaluate or reweigh the evidence to come to a different conclusion.¹³ I cannot interfere with the General Division's findings,

¹² I have tried to make this error more understandable. This ground of appeal is defined in section 58(1)(c) of the DESDA. The General Division will have made an error of fact where it, "based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it."

¹³ *Bergeron v Canada (Attorney General)*, 2016 FC 220, *Hideq v Canada (Attorney General)*, 2017 FC 439, *Parchment v Canada (Attorney General)*, 2017 FC 354.

unless those findings ignored or misunderstood the evidence, or unless they are unsupported by the available evidence.

[28] That is not the case here. The Claimant's appeal has no reasonable chance of success.

Conclusion

[29] I am refusing permission to appeal. This means that the appeal will not proceed.

Stephen Bergen
Member, Appeal Division