



Citation: *LW v Canada Employment Insurance Commission*, 2024 SST 511

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: L. W.
Representative: J. W.
Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated March 23, 2024
(GE-24-605)

Tribunal member: Janet Lew
Decision date: May 10, 2024
File number: AD-24-317

Decision

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

Overview

[2] The Applicant, L. W. (Claimant), is seeking leave to appeal the General Division decision. The General Division found that the Claimant was late when he appealed the reconsideration decision of the Respondent, the Canada Employment Insurance Commission (Commission).

[3] The General Division also found that the Claimant failed to explain why he was late when he filed his Notice of Appeal with the Social Security Tribunal (Tribunal). Because he was late and did not explain why he was late, the General Division concluded that it could not give him more time to file his Notice of Appeal with the Tribunal.

[4] The General Division dismissed the Claimant's appeal. The General Division did not look at whether the Claimant quit his job. The Claimant says he did not quit. He says his employer did not give him any shifts or hours to work.

[5] The Claimant says the General Division did not make any mistakes. He says he thought he had more time to file an appeal. He wants the chance to show that he never quit his job. Not only that, but he also says that he still called into work asking for more hours.

[6] 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 arguable case.¹ If the appeal does not have a reasonable chance of success, this ends the matter.²

¹ See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

² 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."

[7] To be clear, as this is an appeal of the General Division decision, I am not looking at whether the Claimant quit his job or not. I am looking at what the General Division decided. The General Division decided that the Claimant was late and that he did not have an excuse for being late. So, that is the focus of this decision.

[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 made any jurisdictional, procedural, legal, or factual mistakes?

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.³

[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.⁴

The Claimant does not have an arguable case that the General Division made any mistakes

[12] Even though the Claimant says the General Division did not make any mistakes, I am still going to check to make sure that the process at the General Division was fair. I am also going to check the General Division's decision to make sure that it properly identified the issues and appropriately applied the law.

³ See section 58(1) of the DESD Act.

⁴ See section 58(1)(c) of the DESD Act.

[13] I also want to make sure that the General Division did not make any mistakes about the facts. I want to make sure, for example, that the General Division looked at all the facts and that it did not make ignore anything important that it should have looked at.

[14] The Claimant says that he wanted to show that he did not quit his job. But, before the General Division could look at that issue and see whether he quit his job, it had to make sure that the Claimant filed his Notice of Appeal on time. If he did not file his Notice of Appeal on time, then the General Division had to see if it could give him more time to file his Notice of Appeal.

[15] One of the rules that the General Division had to follow before it could give the Claimant more time to file his Notice of Appeal was to make sure that the Claimant had a reasonable explanation for being late.⁵ He had to have a good excuse.

[16] The problem for the Claimant was that he did not come up with an excuse. The General Division sent a letter to the Claimant. The General Division asked the Claimant why he was late.⁶

[17] The Claimant responded. He sent an email on March 22, 2024. The subject line of his email read, "This letter is explaining why I did not send my explanation letter first to UI office."

[18] The General Division reviewed the Claimant's email. The General Division found that the Claimant did not explain why his appeal was late. The Claimant does not challenge this finding. He does not say that the General Division did not understand his email or that it missed or overlooked his excuse.

[19] I do not see that the Claimant ever gave the General Division an excuse for being late with filing the Notice of Appeal either. The Claimant now says that he thought that he had more time to file an appeal. But the General Division did not have this evidence. But, even so, this fact would not have helped the Claimant. The

⁵ See section 27(1) and (2) of the *Social Security Tribunal Rules of Procedure*.

⁶ See Tribunal letter dated March 7, 2024.

Commission's letter of December 4, 2023, said he had 30 days to appeal. I do not see any evidence that could have justified why the Claimant thought that he had more time to file an appeal.

[20] So, as the Claimant did not have a reasonable excuse for being late, the General Division could not look at the Claimant's appeal nor decide whether he quit his job.

[21] As far as the facts, the General Division's findings were consistent with the evidence before it:

- There was no doubt that the Claimant had received the Commission's reconsideration decision.
- The Claimant said in his email that he did not collect his mail. The General Division accepted this evidence. It calculated that he probably knew about the Commission's reconsideration decision by December 24, 2023. The Claimant does not deny this finding.
- The Claimant's representative told the Tribunal (over the phone) that they had filed the Notice of Appeal on January 9, 2024. The General Division did not accept this evidence, because it found that there was nothing to support this. Instead, it found that the Claimant's handwritten Notice of Appeal was dated February 9, 2024.
- The Claimant filed a Notice of Appeal with the Tribunal on February 10, 2024.

[22] More importantly, the Claimant does not say that the General Division was wrong in any of its findings.

[23] The Claimant also does not say that the General Division was procedurally unfair. The General Division told the Claimant that he needed to provide more information before it could go ahead with his appeal. It told him that he had to give an excuse for being late. It gave him enough time to respond. The Claimant did not ask for more time.

[24] I am not satisfied that there is an arguable case that the General Division made any procedural, legal, or factual errors.

Conclusion

[25] 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