



Citation: *FP v Canada Employment Insurance Commission*, 2024 SST 505

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: F. P.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated January 30, 2024
(GE-23-3325)

Tribunal member: Janet Lew

Decision date: May 10, 2024

File number: AD-24-178

Decision

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

Overview

[2] The Applicant, F. P. (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 benefits. The General Division also found that the Claimant did not show that he had good cause for the delay in applying for benefits. It found that he had not given an explanation that the law accepts. For that reason, the General Division found that it could not treat his application as if he had made it on time.

[3] The Claimant says that he had good cause for the delay. He says that he acted diligently throughout the Employment Insurance claims process. He had repeatedly called and followed up with his employer for a Record of Employment which he thought he needed before he could apply for Employment Insurance benefits. He argues that the General Division failed to follow procedural fairness. He also argues that it made a legal error and an important error of fact.

[4] 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

[5] 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.

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.”

Issues

[6] The issues are as follows:

- (a) Is there an arguable case that the General Division made a procedural error?
- (b) Is there an arguable case that the General Division made a legal error by placing the burden of proof on the Claimant?
- (d) Is there an arguable case that the General Division made an important error of fact?

I am not giving the Claimant permission to appeal

[7] 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

[8] 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 a procedural error

[9] The Claimant does not have an arguable case that the process at the General Division was unfair or that the General Division made a procedural error.

[10] The Claimant argues that the General Division victimized him for his employer's actions. He says that it failed to treat him fairly by placing the burden of proof on him to prove his case. He argues the General Division should have assigned some responsibility and blame on his employer and Service Canada. He says his employer

³ See section 58(1) of the DESD Act.

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

and Service Canada should have let him know that Service Canada had received a Record of Employment from the employer in February 2022.

[11] Because the Claimant did not know that Service Canada had the Record of Employment, he did not file a claim until August 2022, as he was trying to get the Record of Employment directly from his employer.

[12] However, natural justice is about fairness in the process. Parties before the General Division enjoy rights to certain procedural protections. An applicant has the right to timely notices, the right to know the case they have to meet, the right to answer that case, and the right to have their case considered fully and fairly by an impartial decision-maker.⁵

[13] A procedural error involves the fairness of the process at the General Division, not with the process at Service Canada or with the Respondent, the Canada Employment Insurance Commission.

[14] I am not examining whether the Claimant's employer or Service Canada should have let the Claimant know that the employer had already filed a Record of Employment with Service Canada. Rather, I am considering whether there was fairness in the process before the General Division.

[15] The process at the General Division was procedurally fair. The Claimant received timely notices. He was aware of the case that he had to meet, and the General Division gave him a fair chance to fully present his case. There was no hearing, but that is because the Claimant opted not to have a hearing. The Claimant's arguments do not raise a reasonable apprehension of bias or a breach of procedural fairness.

[16] I am not satisfied that there is an arguable case that the General Division made a procedural error.

⁵ See *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69, [2019] 1 F.C.R. 121 at para 41.

The Claimant does not have an arguable case that the General Division made a legal error by placing the burden of proof on him

[17] The Claimant does not have an arguable case that the General Division made a legal error by placing the burden of proof on him. The General Division correctly determined that the burden of proof lay with the Claimant.

[18] As the General Division pointed out, the *Employment Insurance Act* requires a claimant to show that there was good cause for the delay.⁶ In other words, the law says that a claimant has the burden of proof to show good cause.

[19] I am not satisfied that there is an arguable case that the General Division made a legal error by placing the burden of proof on the Claimant.

[20] The General Division was aware that the Claimant tried to contact his employer repeatedly to secure a Record of Employment. But it found that this did not show that the Claimant had good cause. The General Division was entitled to conclude as it did, as the case law is well established that, in the circumstances, a reasonable and prudent person would have reached out to Service Canada for information sooner.

The Claimant does not have an arguable case that the General Division made an important factual error

[21] The Claimant does not have an arguable case that the General Division made an important factual error. The General Division's findings were consistent with the evidence before it.

[22] The Claimant has not pointed to any factual findings that he says the General Division made in a perverse or capricious manner, or without regard for the evidence before it.

[23] The Claimant says that he had acted diligently in trying to get a Record of Employment from his employer. He says that this shows that he had good cause. The

⁶ See General Division decision, at para 9, citing section 10(4) of the *Employment Insurance Act*.

General Division was aware of this evidence. However, it determined that this did not show that there was good cause.

[24] The Claimant is asking the Appeal Division to place greater weight on the fact that he had acted diligently in trying to get a Record of Employment from his employer, to show that he had good cause.

[25] However, the issue of how much weight to assign is the exclusive province of the trier of fact. In other words, it is up to the General Division to decide how much weight to place on the evidence.

[26] Setting this issue aside, the case law has consistently said that an applicant has to act like a reasonable and prudent person. So, it is not enough to act earnestly in trying to get a Record of Employment.

[27] I am not satisfied that there is an arguable case that the General Division made an important factual error.

Conclusion

[28] 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