Citation: *YH v Canada Employment Insurance Commission*, 2024 SST 564

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	Y. H.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated January 15, 2024 (GE-22-4193)

Tribunal member:	Solange Losier
Decision date:	May 20, 2024
File number:	AD-24-60

Decision

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

Overview

[2] Y. H. is the Claimant in this case and applied for Employment Insurance (EI) regular benefits on June 21, 2022. He asked to backdate his EI claim to December 15, 2021 (this is called "antedating" your EI claim).

[3] The Canada Employment Insurance Commission (Commission) denied the Claimant's request to antedate his EI claim to the earlier date.[1]

[4] The General Division came to the same conclusion.[2] It decided that the Claimant hadn't shown he had good cause throughout the entire period of delay. Because of that, his EI claim could not be antedated to the earlier date.[3]

[5] The Claimant is now asking for permission to appeal the General Division's decision to the Appeal Division.[4] He argues that the General Division didn't follow a fair process and made an error of law, an error of jurisdiction and an important error of fact.

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

Issue

[7] Is there an arguable case that the General Division made a reviewable error?

---

[1] See Commission's initial decision at page GD3-15 and reconsideration decision at page GD3-20.
[2] See General Division decision at pages AD1A-1 to AD1A-8.
[3] The General Division joined this appeal with another file (GE-22-4196 / issue: hours) involving the same Claimant. Both files were heard at the same time, but the General Division issued two separate decisions because the legal issues were different. See also, pages GDJ2-1 to GDJ2-3.
[4] See Application to the Appeal Division at pages AD1-1 to AD1-8.

Analysis

[8] An appeal can only proceed if the Appeal Division gives permission to appeal.[5] I must be satisfied that the appeal has a reasonable chance of success. There must be some arguable ground that the appeal might succeed.[6]

[9] The possible grounds of appeal to the Appeal Division are that the General Division:[7]

- 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.

[10] If the Claimant's appeal has no reasonable chance of success, then I must refuse permission to appeal.[8]

I am not giving the Claimant permission to appeal

[11] In the Claimant's application to the Appeal Division, he argues that the General Division didn't follow a fair process, made an error of law, an error of jurisdiction and an important error of fact.

[12] This is a summary of the Claimant's main arguments to the Appeal Division:[9]

- He is disgusted with the unfairness and partiality of the General Division member. It was a biased decision.
- The wrong hearing date was scheduled. This caused him to appear for one hearing at the last minute even though he was told that the next hearing date was cancelled.

---

[5] See section 56(1) of the *Department of Employment and Social Development Act* (DESD Act).
[6] See *Osaj v Canada (Attorney General)*, 2016 FC 115, at paragraph 12.
[7] The relevant errors are formally known as "grounds of appeal." They are listed under section 58(1) of the DESD Act. These errors are also explained on the application to the Appeal Division at page AD1- 3.
[8] See section 58(2) of the DESD Act.
[9] See page AD1-3.

- He was told that a final decision would be made in 3–4 weeks after the hearing, but the decision was only issued around 4.5 months later.
- Lastly, the General Division didn't follow the law and facts.

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

[13] The principles of natural justice are concerned with procedural fairness. The right to a fair hearing before the Tribunal includes certain procedural protections. For example, the right to an impartial (unbiased) decision maker, the right of a party to know the case against him and to be given an opportunity to respond to it.

[14] If the General Division doesn't follow a fair process, then I can intervene.[10]

[15] An allegation of bias is a serious allegation. An allegation for bias cannot rest on mere suspicion, pure conjecture, insinuations, or mere impressions.[11]

[16] The legal test for establishing bias is whether an informed person, viewing the matter realistically and practically and having thought the matter through, would conclude that it was more likely than not that the General Division member, whether consciously or unconsciously, would not decide the case in a fair manner.[12]

[17] I reviewed the file and listened to the audio recording of the General Division hearing. The teleconference hearing lasted for approximately 54 minutes and only the Claimant attended.

[18] The audio recording from the General Division hearing reveals the following:

- The General Division listened to the Claimant as he presented his case
- The General Division asked him relevant questions when necessary
- The General Division was respectful throughout the hearing

[10] See section 58(1)(a) of the DESD Act.
[11] See *Arthur* v *Canada (Attorney General)*, 2001 FCA 223.
[12] See *Committee for Justice and Liberty* v *National Energy Board*, 1976 CanLII 2 (SCC).

- The General Division permitted the Claimant to submit documents after the hearing to support his case (post hearing documents)[13]

[19] It is not arguable that the General Division was biased. An informed person, viewing the matter reasonably and practically and having thought the matter through would not conclude that it was more likely than not that the General Division was biased.

[20] The Claimant's allegation appears to amount to a disagreement with the outcome. However, a disagreement with the outcome is insufficient to amount to bias and not a reviewable error.

[21] The Claimant also argues that the General Division scheduled the wrong hearing date and it caused him to appear at the hearing at the last minute. He says that he was told at the previous hearing date [on August 23, 2023] that the next hearing date [on August 30, 2023] was cancelled.

[22] The Claimant appears to be referring to another General Division file (tribunal file number GE-22-4195) which was scheduled to be heard by the General Division on August 30, 2023, with the same Tribunal Member.[14] The legal issue in that file involved a disentitlement to EI benefits due to alleged misconduct.

[23] I reviewed his application to the Appeal Division and the Claimant specifically wrote that he is appealing the decisions for the following tribunal files: GE-22-4193 (antedate) and GE-22-4196 (hours).[15]

[24] This means that the only appeals before the Appeal Division are GE-22-4193 and GE-22-4196 (and not GE-22-4195).

---

[13] See post hearing documents at pages GDJ4-1 to GDJ4-4.
[14] The recording shows that the General Division and the Claimant discussed the other appeal file (GE-22-4195/issue: misconduct) and hearing date for August 30, 2023. There was likely some confusion because the General Division told the Claimant that the hearing for the other file would proceed on August 30, 2023, and later said it would be rescheduled to the end of September 2023 (see audio recording from 43:06 to 54:28).
[15] See page AD1-1.

[25] The record for this file shows that the Claimant got the notice of hearing in advance of the hearing scheduled on August 23, 2023.[16] He confirmed his attendance in writing and attended the hearing.[17]

[26] So, it is not arguable that the General Division didn't follow a fair process. The Claimant got the notice of hearing in advance and there was no confusion about when the hearing would be held for this particular file.

[27] The Claimant also argues that he expected the General Division decision within 3–4 weeks after the hearing. The Claimant's assumption was correct because the General Division told him that it expected to issue its decision within 3–4 weeks after September 6, 2023.[18]

[28] The General Division issued its decision on January 13, 2024. There is no explanation in its decision or in the record on why it did not issue its decision in 3–4 weeks.

[29] It is not arguable that the General Division failed to follow a fair process when it issued its decision later than it said it would. In some cases, the General Division may need more time to render its decision depending on the complexity of the cases, volume of cases or multiple files for one person.

[30] To sum up, there is no arguable case that the General Division was biased or didn't follow a fair process. The Claimant attended the General Division hearing on August 23, 2023, and there was no confusion about when that hearing would take place. The issuance of its decision was in fact delayed, but it's possible that the General Division needed more time to render a decision, particularly since it had three files involving the Claimant.

---

[16] The Tribunal emailed the Claimant the notice of hearing on August 15, 2023.
[17] See notice of hearing at GDJ1-1 to GDJ1-3 and Claimant's written confirmation of attendance at page GDJ3-1.
[18] See audio recording at 53:13 to 53:21.

– **There is no arguable case that the General Division made an error of law or error of jurisdiction**

[31] An error of law can happen when the General Division doesn't apply the correct law or when it uses the correct law but misunderstands what it means or how to apply it.[19]

[32] An error of jurisdiction means that the General Division didn't decide an issue it had to decide or decided an issue it did not have the authority to decide.[20]

[33] The Tribunal's authority to review decisions comes from the *Employment Insurance Act* (EI Act). The EI Act says that the Tribunal can only review reconsideration decisions made by the Commission that are appealed to the Tribunal.[21]

[34] In this case, the Claimant appealed the Commission's reconsideration decision dated November 29, 2022, that denied his request to antedate his EI claim to an earlier date.[22]

[35] The EI Act says in order to have your EI claim antedated, you have to prove that you had good cause for the entire period of delay and that you qualified for EI benefits on the earlier date.[23]

[36] Claimants can show good cause by proving that they have done what a reasonable and prudent person would have done in the same circumstances throughout the entire period of delay.[24]

[37] Unless there are exceptional circumstances, a reasonable person is expected to take reasonably prompt steps to understand their entitlement to benefits and their obligations under the EI Act.[25]

---

[19] See section 58(1)(b) of the DESD Act.
[20] See section 58(1)(a) of the DESD Act.
[21] See sections 112 and 113 of the *Employment Insurance Act* (EI Act). It sets out the Tribunal's authority to review reconsideration decisions made by the Commission.
[22] See Commission's reconsideration decision at page GD3-20 and appeal to General Division at pages GD2-1 to GD2-10.
[23] See section 10(4) of the EI Act.
[24] See *Canada (Attorney General) v Burke*, 2012 FCA 139, at paragraph 6.
[25] See *Canada (Attorney General) v Kaler*, 2011 FCA 266 at paragraphs 4 and 11.

[38] The General Division set out the correct legal test to be applied and relevant case law in its decision.[26]

[39] The General Division had to decide whether the Claimant had good cause for the delay in applying for EI benefits for the entire period of delay.[27] It determined that the period of delay ran from December 15, 2021, to June 21, 2022.[28]

[40] The General Division decided that the Claimant did not have good cause for the entire period of delay.[29] It considered the reasons and evidence he provided, but ultimately found that he did not take reasonably prompt steps to understand his entitlement to benefits and obligations under the law.[30] It also found there were no exceptional circumstances.

[41] There is no arguable case that the General Division made an error of law or error of jurisdiction. It stated and applied the correct law and case law. It only decided the issues it had the authority to decide (antedate) and did not decide any issues it had no authority to decide.

– **There is no arguable case that the General Division made an important error of fact**

[42] An error of fact happens when the General Division has "based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it."[31]

[43] Not all errors of fact will allow me to intervene. An error of fact needs to be important enough that the General Division relied on it to make a finding that impacted the outcome of the decision.

---

[26] See paragraphs 9–14 of the General Division decision.
[27] See Commission's reconsideration decision at page GD3-20 and sections 112 and 113 of the EI Act.
[28] See paragraph 12 of the General Division decision.
[29] See paragraph 18 of the General Division decision.
[30] See paragraphs 19–26 of the General Division decision.
[31] See section 58(1)(c) of the DESD Act.

[44] I can intervene if the General Division based its decision on an important mistake about the facts of the case.

[45] As noted above, the General Division found that the Claimant had not shown that he had good cause to antedate his claim during the entire period of delay.

[46] The General Division was entitled to make findings based on the evidence. Its key findings were consistent with the evidence in the record.

[47] There is no arguable case that the General Division made an important error of fact. I cannot reweigh the evidence in order to come to a conclusion more favourable for the Claimant.[32] An appeal to the Appeal Division is not a new hearing.

Conclusion

[48] I reviewed the file, examined the decision under appeal and did not find any key evidence that the General Division might have ignored or misinterpreted.[33]

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

Solange Losier
Member, Appeal Division

[32] See *Garvey* v *Canada (Attorney General)*, 2018 FCA 118.
[33] See *Karadeolian* v *Canada (Attorney General*), 2016 FC 615, which recommends doing such a review.