



Citation: *IM v Canada Employment Insurance Commission*, 2024 SST 743

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

**Applicant:** I. M.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated  
May 9, 2024 (GE-24-1111)

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**Tribunal member:** Glenn Betteridge

**Decision date:** June 27, 2024

**File number:** AD-24-377

## Decision

[1] I am not giving I. M. permission to appeal. This means his appeal won't go forward. And the General Division decision stands unchanged.

## Overview

[2] I. M. is the Claimant in this case. He applied for Employment Insurance (EI) regular benefits when he stopped working in October 2023. The Canada Employment Insurance Commission (Commission) accepted his claim for benefits.

[3] But he didn't file weekly reports until January 2024. This meant many of his reports were late—past the three-week deadline. So, the Commission could only pay him benefits starting in December 2024.<sup>1</sup>

[4] He asked the Commission to antedate (also called backdate) his reports, so he could get benefits starting in October 2023.<sup>2</sup> The Commission refused. It decided he hadn't shown good cause for the delay filing his reports.<sup>3</sup> The Commission upheld its decision when he asked for a reconsideration.

[5] The Claimant appealed to this Tribunal's General Division. It dismissed his appeal because he didn't prove he had good cause for the delay. He appealed the General Division decision to the Appeal Division.

[6] The Claimant's appeal can only go forward if I give him permission to appeal.

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<sup>1</sup> Section 49(1) of the *Employment Insurance Act* (EI Act) says that a person who wants to get benefits for a week of unemployment has to file a report for that week. Together, section 50(4) of the EI Act and section 26(1) of the *Employment Insurance Regulations* say the person has to make their claim within three weeks after the week they are claiming benefits for. And section 50(1) of the EI Act says a person who doesn't do that isn't entitled to get benefits for as long as they haven't filed their reports.

<sup>2</sup> Section 10(5) of the EI Act lets the Commission backdate late report(s) if a person can show they had good cause for their delay throughout the entire period of the delay.

<sup>3</sup> See section 10(5) of the EI Act.

## Issue

[7] I have to decide whether there is an arguable case the General Division used an unfair process in the Claimant's appeal.

## I am not giving the Claimant permission to appeal

### The test for permission to appeal

[8] I can only give the Claimant permission to appeal if he shows his appeal has a reasonable chance of success.<sup>4</sup> This means he has to show an arguable case the General Division made one of these errors:

- It used an unfair process or was biased.
- It didn't decide an issue it should have decided, or decided an issue it should not have decided.
- It based its decision on an important factual error.
- It made a legal error.<sup>5</sup>

[9] This test is easy to meet.

[10] To decide whether to give the Claimant permission, I reviewed the General Division appeal file.<sup>6</sup> I read the General Division decision and the Claimant's Appeal Division application.<sup>7</sup> And I listened to the recording of the General Division hearing.

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<sup>4</sup> Section 58(2) of the *Department of Employment and Social Development Act* (DESD Act) says that I have to give permission to appeal if the appeal has a reasonable chance of success. This means the same as having an "arguable case." See *O'Rourke v Canada (Attorney General)*, 2018 FC 498; *Osaj v Canada (Attorney General)*, 2016 FC 115 at paragraph 12; and *Ingram v Canada (Attorney General)*, 2017 FC 259 at paragraph 16.

<sup>5</sup> These are the grounds of appeal in section 58(1) of the DESD Act. I refer to these ground as errors.

<sup>6</sup> See GD2, GD3, GD4.

<sup>7</sup> See AD1 and AD1A.

## **There isn't an arguable case the General Division used an unfair process**

[11] On his permission to appeal form, the Claimant checked the box that says the General Division didn't follow procedural fairness.<sup>8</sup> But he didn't explain why. So, I gave him the chance to explain, which he did.<sup>9</sup>

[12] His explanation repeats what he wrote and said at the General Division. Then he writes:

It is for the reasons above that I am asking that my appeal be considered. I live on a very modest pension and continue to work due to financial hardship at the age of 82 years old in order to be able to afford to live, however have to rely on EI benefits when there is not enough work for me, despite being ready, willing and able. Your consideration would be greatly appreciated.<sup>10</sup>

[13] The General Division makes an error if it uses an unfair process or is biased.<sup>11</sup> These are called procedural fairness or natural justice errors. The question is whether a person knew the case they had to meet, had an opportunity to respond to that case, and had an impartial decision-maker consider their case fully and fairly.<sup>12</sup>

[14] Nothing in the General Division record shows me there is an arguable case the General Division used an unfair process.

[15] At the hearing, the General Division reviewed the Commission's arguments and the law about antedating reports. It gave the Claimant a full opportunity to tell his story—to respond to the Commission's evidence and arguments. It asked him questions to clarify his evidence and reasons for the delay filing his reports. The member and the Claimant used a professional interpreter to communicate during the hearing.

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<sup>8</sup> See AD1-3.

<sup>9</sup> See AD1A.

<sup>10</sup> See AD1A-1.

<sup>11</sup> This is a ground of appeal under section 58(1)(a) of the DESD Act)

<sup>12</sup> See *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69; and *Kuk v Canada (Attorney General)*, 2024 FCA 74.

[16] Nothing shows me the General Division member might have been biased or prejudged the Claimant's appeal.

[17] So, the Claimant hasn't shown an arguable case the General Division's process was unfair.

### **There isn't an arguable case the General Division made any other error I can consider**

[18] The Claimant's first language isn't English, and he is representing himself. He relied on his daughter to help him with his EI. So, I looked beyond his written argument to see if there was an arguable case that the General Division made any other errors.<sup>13</sup>

[19] The General Division identified and decided the legal issues it had to decide. It correctly summarized and used the law it had to use. It didn't ignore or misunderstand any evidence it had to consider. And it gave more than adequate written reasons for its decision. So, there isn't an arguable case the General Division made an error.

[20] Unfortunately for the Claimant, an appeal to the Appeal Division isn't a new process from scratch—it's not a redo or a do-over of the General Division process.<sup>14</sup> I can't re-weigh the evidence before the General Division and come to a different decision.<sup>15</sup> Disagreeing with the General Division's decision because it is unfair to the Claimant isn't an error I can consider.<sup>16</sup> And the law doesn't allow me to give him permission to appeal based on financial hardship.

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<sup>13</sup> Where a self-represented claimant is asking for permission to appeal, I should not apply the permission to appeal test in a mechanistic manner. I take this to mean I should review the law, the evidence, and the decision from the General Division. See for example *Griffin v Canada (Attorney General)*, 2016 FC 874; *Karadeolian v Canada (Attorney General)*, 2016 FC 615; and *Joseph v Canada (Attorney General)*, 2017 FC 391.

<sup>14</sup> See *Tracey v Canada (Attorney General)*, 2015 FC 1300. Where an appeal process lets a decision-maker review the law and the evidence and make a new decision, this is called a *de novo* appeal.

<sup>15</sup> See *Bergeron v Canada (Attorney General)*, 2016 FC 220.

<sup>16</sup> See *Quadir v Canada (Attorney General)*, 2018 FCA 21.

## **Conclusion**

[21] The Claimant hasn't shown that there is an arguable case the General Division made an error. In other words, his appeal doesn't have a reasonable chance of success.

[22] So, I am denying him permission to appeal. This means his appeal won't go forward and the General Division decision stands unchanged.

Glenn Betteridge  
Member, Appeal Division