

**Social Security Tribunal of Canada
Appeal Division**

Extension of Time and Leave to Appeal Decision

Applicant: A. W.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated March 14, 2024
(GE-24-690)

Tribunal member: Stephen Bergen

Decision date: June 17, 2024

File number: AD-24-345

Decision

[1] I am granting the Claimant's request for an extension of time to apply to the Appeal Division. However, I am refusing leave (permission) to appeal.

Overview

[2] A. W. is the Applicant. I will call her the Claimant because this appeal concerns her claim for Employment Insurance (EI) benefits.

[3] The Claimant applied for family caregiver benefits as a self-employed person on January 10, 2023. However, she meant to apply as an employee, so she submitted another application on March 3, 2023.

[4] The Respondent, the Canada Employment Insurance Commission (Commission) informed the Claimant that she was not eligible for family caregiver benefits from March 20, 2023. It said she had not supplied a medical certificate.

[5] The Claimant provided the requested certificate in November 2023, together with another application for benefits. She told the Commission she wanted it to reconsider its decision to deny her claim for caregiver benefits. When she filed her reconsideration request, she appeared to be asking for family caregiver benefits for an earlier period when she had been caring for her sick grandmother. (Her grandmother died on January 8, 2023.)

[6] The Commission told the Claimant that she could not receive benefits to care for her grandmother for a period after her grandmother had died. It sent the Claimant its reconsideration decision on January 5, 2024, confirming that she did not qualify for family caregiver benefits.

[7] The Claimant appealed to the General Division, but the General Division dismissed her appeal.

[8] The Claimant next asked the Appeal Division for permission to appeal the General Division decision. The Claimant's application to the Appeal Division was late but I have extended the time so that I may consider whether to grant permission.

[9] I have decided not to give her permission to appeal. The Claimant has not made out an arguable case that the General Division made any error that I may consider.

Issues

[10] The issues in this appeal are:

- a) Was the application to the Appeal Division late?
- b) Should I extend the time for filing the application?
- c) Is there an arguable case that the General Division made an error that I can consider?

Analysis

The application was late

[11] The Claimant authorized the General Division to communicate with her by email. The General Division issued its decision on March 14, 2024, and emailed it to the Claimant the following day. In her application to the Appeal Division, the Claimant acknowledged she received the decision on March 15, 2024.

[12] The law says that a claimant must file an application to the Appeal Division within 30 days of the date the General Division decision is communicated to them.¹

[13] Thirty days from March 15, 2024, is April 14, 2024. The Appeal Division received her application on May 8, 2024. Her application is late.

¹ See section 52(1)(a) of the *Department of Employment and Social Development Act* (DESDA).

I am extending the time for filing the application

[14] When deciding whether to grant an extension of time, I have to consider whether the Claimant has a reasonable explanation for why the application is late.

[15] I accept that the Claimant had a reasonable explanation. In her application, she explained that she had been battling mental health issues and had recently had her medications adjusted.

[16] She did not support that assertion with a mental disorder diagnosis or a medical opinion on how her mental health may have affected her ability to respond to the General Division's decision in a timely manner. However, her application was only three weeks late, so I am prepared to take her explanation at face value. I accept that she has a reasonable explanation for why her application is late.

I am not giving the Claimant permission to appeal

General Principles

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

[18] 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.

[19] 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

² It says this in section 27(2) of the *Social Security Tribunal Rules of Procedure*.

³ 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)*.

grounds of appeal. Other court decisions have equated a reasonable chance of success to an “arguable case.”

The Claimant’s grounds of appeal

[20] The Claimant selected all of the available grounds of appeal when she completed her application to the Appeal Division. However, the more detailed explanation in her application did not identify any specific error.

[21] She did not claim that there was anything unfair about how the General Division proceeded on her appeal. She did not identify any issue or decision that should have been considered by the General Division or that it should not have considered. She did not identify any legal mistake. She did not point to some piece of evidence that the General Division ignored or misunderstood.

[22] Instead, the Claimant seemed to disagree with the eligibility and qualification criteria described in the *Employment Insurance Act* (EI Act) itself, and with how the EI Act is administered.

[23] I wrote to the Claimant on May 15, 2024, and I asked her to explain again why she was appealing the General Division decision. In my letter, I set out the grounds of appeal (or possible errors) together with brief explanations of what each meant.

[24] The Claimant responded on June 4, 2024. In essence, she asked the Appeal Division to grant her appeal because of all that she had been through, and how she was not at fault for her difficult circumstances.

– Procedural fairness

[25] It is clear that the Claimant disagrees with the decision result and does not feel it is fair. But the only kind of fairness I can review is “procedural fairness,” which concerns

⁴ See *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; and *Ingram v Canada (Attorney General)*, 2017 FC 259.

the General Division's process only. It is not concerned with whether a party feels that the decision result is fair.

[26] 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. The Claimant did not identify anything in the process that prevented her from having a fair chance to be heard and she has not suggested the General Division member was biased.

[27] 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.

[28] There is no arguable case that the General Division decision made an error of procedural fairness.

– **Error of Jurisdiction**

[29] The General Division must consider all the issues that were reconsidered by the Commission. It has no jurisdiction to consider any other issues.⁵ The reconsideration decision concerned the Commissions' refusal to pay the family caregiver benefits that the Claimant applied for on January 10, 2024.

[30] The General Division considered the Claimant's entitlement to caregiver benefits from the date of her application. It did not address whether the Claimant might have been entitled to an antedate of her claim to some earlier date on which she would have qualified for benefits.⁶ These issues were not addressed in the reconsideration decision.

[31] The General Division made a decision on the only issue that was properly before it. There is no arguable case that it made an error of jurisdiction.

⁵ See section 113 of the EI Act.

⁶ An antedate is where the Commission, at the request of a claimant, agrees that the claim should be treated as though it had been made at an earlier date. To obtain an antedate, a claimant must show that they would otherwise have qualified (had sufficient insurable hours in their qualifying period), and that they had good cause for the delaying to when they actually applied.

– **Error of law**

[32] The ground of appeal concerned with an “error of law” does not permit an attack on the law itself. It describes an error in how the General Division applies the law, fails to apply the law, or applies the wrong law.

[33] The Claimant did not point to any error of law, and none is apparent on the face of the record. The General Division was correct that her claim could not have started earlier than the date she applied for benefits (without an antedate), and that she could not qualify for caregiver benefits to look after her grandmother after her grandmother had died.

[34] There is no arguable case that the General Division made an error of law.

– **Error of fact**

[35] The law says that 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.⁷

[36] The Claimant did not point to any evidence that the General Division ignored or misunderstood, or try to show how the General Division’s findings did not follow from the evidence.

[37] I reviewed the record, and I did not find a way that the Claimant could argue that the General Division made an error of fact.

[38] I sympathize with the Claimant, but I have no authority to allow the Claimant’s appeal on compassionate grounds. Eligibility for family caregiver benefits does not depend on a claimant’s personal or financial hardships.

[39] The Claimant’s appeal has no reasonable chance of success.

⁷ 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.”

Conclusion

[40] I granted an extension of time, but I am refusing permission to appeal. This means that the appeal will not proceed.

Stephen Bergen
Member, Appeal Division