



Citation: *AC v Canada Employment Insurance Commission*, 2024 SST 790

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: A. C.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated June 10, 2024
(GE-24-1505)

Tribunal member: Janet Lew

Decision date: July 8, 2024

File number: AD-24-451

Decision

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

Overview

[2] The Applicant, A.C. (Claimant), is seeking leave (permission) to appeal the General Division decision.

[3] The General Division found that the Claimant filed his appeal more than one year after the Respondent, the Canada Employment Insurance Commission (Commission), had communicated its reconsideration decision to him. Because more than one year had passed, it found that he was too late to be able to bring an appeal of the reconsideration decision.

[4] The Claimant does not challenge the General Division's findings that he was late when he filed an appeal. Indeed, he acknowledges that he was late but says his former employer's "malfeasance" caused the delay. He says his employer wrongfully dismissed him, so he had to file a grievance. He succeeded in getting reinstated, but this took time. He also argues that his employer wrongfully dismissed him for misconduct, as he says that he never committed any misconduct.

[5] 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

Issue

[6] Is there an arguable case that the General Division made a legal or factual error when it found that the Claimant could not bring an appeal?

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

² Under section 58(2) of the *Department of Employment and Social Development Act* (DESD Act), I am required to refuse permission if I am satisfied, "that the appeal has no reasonable chance of success."

I am not giving the Claimant permission to appeal

[7] The Appeal Division may intervene in General Division decisions if the General Division made any jurisdictional, procedural, legal, or certain types of factual errors.³

[8] For factual errors, the General Division had to have based its decision on those factual errors, and it had to have made the findings in a perverse or capricious manner or without regard for the material before it.⁴

The Claimant does not have an arguable case that the General Division made legal or factual errors

[9] The Claimant does not have an arguable case that the General Division made legal or factual errors. The General Division properly identified and applied the law to the facts. The General Division also did not ignore or overlook any of the relevant facts.

– The General Division examined when the reconsideration decision had been communicated to the Claimant

[10] The General Division tried to determine when the Claimant received the Commission's reconsideration decision. The Claimant indicated on his Notice of Appeal⁵ that he could not remember when he received the reconsideration decision. The General Division found, and the Claimant did not disagree that:

- i. the Commission initially communicated its decision to him verbally on June 8, 2022,⁶
- ii. the Commission then sent a letter dated June 8, 2022, to the Claimant, and
- iii. the Commission sent the letter to the same address that the Claimant provided on his Notice of Appeal.

³ See section 58(1) of the DESD Act.

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

⁵ See Notice of Appeal, filed with the General Division, at GD 2-5.

⁶ See Supplementary Record of Claim, dated June 7, 2022, at GD 3-34.

[11] The General Division noted that there was no evidence to suggest that the Commission received its letter as “undelivered.”

[12] The General Division asked the Claimant to confirm when he might have received the reconsideration decision, but he did not respond.

[13] The General Division did not make any specific findings as to when the Commission communicated its reconsideration decision to the Claimant. It also did not set out either a deadline for when the Claimant should have brought an appeal.

[14] But it is evident that the General Division concluded that the Claimant received the reconsideration decision sometime no later than April 17, 2023. After all, the General Division found that more than one year had passed between when the reconsideration decision had been communicated to the Claimant and when he filed his appeal on April 18, 2024.

[15] This was a reasonable finding, based on the evidence before it. The Commission sent its reconsideration decision to the Claimant on or about June 8, 2022. So, it is more likely than not, that he would have received the reconsideration decision soon after that date. The Claimant does not deny that he did not receive the reconsideration decision. And, in his Application to the Appeal Division, he acknowledged that he delayed in seeking benefits.

– **The General Division made a minor factual error, but it would not have changed the outcome**

[16] In my own review of the hearing file, the General Division made an error when it said the Commission verbally communicated its decision to the Claimant on June 8, 2022. The Commission’s phone notes show that an agent contacted the Claimant on June 7, 2022,⁷ rather than on June 8, 2022. However, this factual error is insignificant in the overall picture. If the one-year clock to file an appeal started from the

⁷ See Supplementary Record of Claim, dated June 7, 2022, at GD 3-34.

day when the Commission verbally communicated its decision, this would mean that the Claimant had to have brought an appeal one day sooner.

– **The General Division found that more than one year had passed before the Claimant filed an appeal**

[17] Based on the facts before it, the General Division determined that section 52(2) of the *Department of Employment and Social Development (DESD) Act* applied. As the General Division set out, the section states that “in no case may an appeal be brought more than one year after the day on which the decision is communicated.”

[18] It is clear from the section that a claimant has to bring their appeal within a year after the day on which the decision is communicated. The Claimant did not do that, so could not bring his appeal.

[19] The section does not provide for any exceptions. Although the Claimant explained that he was late because he awaited the outcome of a grievance against his employer, that was not relevant. The General Division did not make a legal or factual error by not considering the Claimant’s explanation for being late.

[20] The General Division did not have to consider the employer’s conduct. It would not have overcome the requirements under section 52(2) of the DESD Act that the Claimant had to file an appeal on time.

[21] The General Division also did not make a legal error when it decided that, because the Claimant filed an appeal more than a year after he received the reconsideration decision, that he was too late to bring an appeal. The General Division’s decision is consistent with the law and with the evidence.

– **The General Division did not have any authority to consider the misconduct issue**

[22] The Claimant suggests that the General Division failed to consider whether he was entitled to receive Employment Insurance benefits. He denies that he committed any misconduct. He argues that his employer wrongfully dismissed him when he did not comply with its vaccination requirements. Besides, he has contributed to the

Employment Insurance program for most of his adult life, so says that he should be able to rely on it in time of need. He says that he should have received Employment Insurance benefits.

[23] However, because the Claimant was too late in bringing an appeal, the General Division could not consider the Claimant's entitlement to Employment Insurance benefits and whether he had lost his employment due to misconduct. The General Division simply did not have the authority to consider these issues because the Claimant brought his appeal too late.

Conclusion

[24] 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