



Citation: *SR v Canada Employment Insurance Commission*, 2024 SST 781

Social Security Tribunal of Canada Appeal Division

Extension of Time and Leave to Appeal Decision

Applicant: S. R.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated February 7, 2024
(GE-23-3394)

Tribunal member: Solange Losier

Decision date: July 5, 2024

File number: AD-24-215

Decision

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

Overview

[2] S. R. is the Claimant in this case. She applied for Employment Insurance (EI) regular benefits after she was dismissed from her job.

[3] The Canada Employment Insurance Commission (Commission) decided that she was not entitled to get EI regular benefits from July 16, 2023 because she lost her job due to misconduct.¹ The General Division concluded the same.²

[4] The Claimant is now asking for permission to appeal the General Division decision to the Appeal Division.³ She explains that the employer never asked or contacted her about the negative online post.⁴

[5] I am denying the Claimant's request for permission to appeal because it has no reasonable chance of success.

Preliminary matters

– I asked the Claimant for additional information about her appeal

[6] The Claimant didn't fill out the correct forms to apply to the Appeal Division. She filled out the forms that are normally used to appeal to the General Division. Because of that, there was some missing information about her appeal.

[7] So, I wrote to the Claimant to ask her for additional information about her appeal.⁵ It looked like her application to the Appeal Division was made late.⁶ I asked her

¹ See Commission's initial decision at pages GD3-29 to GD3-30 and reconsideration decision at page GD3-79.

² See General Division decision at pages AD1A-1 to AD1A-9.

³ See Claimant's appeal to the Appeal Division at pages AD1-1 to AD1-11.

⁴ See page AD1-7 where the Claimant summarizes what happened that led to being fired from her job.

⁵ This letter included information about the reasons ("grounds of appeal") that I could consider under law under section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

⁶ See Tribunal letter dated March 26, 2024.

to provide an explanation about the lateness (if it was in fact late) and to tell me why she was appealing. The deadline to reply was April 9, 2024.

[8] Before the deadline, a lawyer from a private firm emailed the Tribunal on the Claimant's behalf asking for an extension. He explained that they needed time to discuss the matter and to review her documents.⁷ The Tribunal gave her an extension until May 1, 2024.⁸

[9] The Claimant sent another email asking for an extension to get other legal advice.⁹ She explained that there was a legal clinic who could help her for free, but they would be closed until May 21, 2024. This followed by another email from the Claimant asking for a further extension because she wasn't able to get help from the legal clinic.¹⁰ The Tribunal gave her another extension until May 31, 2024.¹¹

[10] The Claimant didn't reply by the May 31, 2024 deadline. The Tribunal provides "navigator services" to help unrepresented parties. Navigators are specialized staff who are familiar with the appeal process. The navigator assigned to this file tried calling the Claimant, but couldn't reach her.

[11] The navigator followed by sending a letter to the Claimant inviting her to have a telephone call for information purposes.¹² The Claimant replied to the navigator's letter and a telephone call was scheduled with an interpreter to assist on June 19, 2024.¹³

[12] Following that call, I wrote to the Claimant asking her to provide the additional information by July 2, 2024, and failing that, the file would proceed to the next usual steps.¹⁴

⁷ See pages AD1B-1 to AD1B-4. No further correspondence came from this lawyer, so it seems they were not retained by the claimant.

⁸ See Tribunal letter dated April 10, 2024.

⁹ See page AD1C-1.

¹⁰ See page AD3-1.

¹¹ See pages AD2-1 to AD2-3.

¹² See Tribunal letter dated June 6, 2024.

¹³ The purpose of that call was to explain the appeal process and additional information the Tribunal needed (i.e., late appeal information and reasons for making her appeal).

¹⁴ See pages AD4-1 to AD4-3.

[13] As of the date of this decision, the Claimant hasn't replied with any additional information about her appeal.

[14] The Tribunal has to make sure that the appeal process is as simple and quick as fairness allows.¹⁵ In this case, the Claimant was given a few extensions to reply to our request for additional information about her appeal. A navigator with the assistance of an interpreter also verbally told her what information was needed.

[15] A further extension to reply is not necessary, so the appeal has now proceeded to the next steps. That is, deciding whether the appeal was late. And deciding whether she has an arguable case that the General Division made a reviewable error.

Issues

[16] The issues in this appeal are:

- a) Was the application to the Appeal Division late?
- b) If so, should I extend the time for filing the application?
- c) Is there an arguable case that the General Division made a reviewable error?

Analysis

The application to the Appeal Division was not late

[17] The General Division issued its decision on February 6, 2024.

[18] The deadline to apply to the Appeal Division is 30 days after the day on which the General Division decision was communicated to the Claimant in writing.¹⁶

[19] I have to decide when the General Division decision was communicated to the Claimant.

¹⁵ See section 8(1) of the *Social Security Tribunal Rules of Procedure*.

¹⁶ See section 57(1)(a) of the DESD Act.

[20] As noted above, the Claimant didn't use the correct forms to apply to the Appeal Division. However, in "box 6" of the form she submitted it asks when she received the "reconsideration decision" and she wrote, "February 21, 2024."

[21] I find it more likely than not, that February 21, 2024, was the date the Claimant received the General Division decision because coincidentally it was a few weeks after it had issued its decision.

[22] Plus, it doesn't make sense that she got the reconsideration decision on February 21, 2024, because the Commission's reconsideration decision was dated several months earlier, on November 1, 2023.

[23] Using February 21, 2024, as the date she got the General Division decision, she had a 30-day deadline to file her application to the Appeal Division. This means that her 30-day deadline was March 23, 2024.

[24] In this case, the Tribunal received the Claimant's application to the Appeal Division on March 18, 2024.¹⁷

[25] Accordingly, I find that the Claimant filed her application to the Appeal Division on time. This means it was not late and it's not necessary to consider whether to give an extension of time.

Analysis

The test for getting permission to appeal

[26] An appeal can only proceed if the Appeal Division gives permission to appeal.¹⁸ I must be satisfied that the appeal has a reasonable chance of success.¹⁹ This means that there must be some "arguable ground" that the appeal might succeed.²⁰

¹⁷ See pages AD1-1 to AD1-9.

¹⁸ See section 56(1) of the DESD Act.

¹⁹ See section 58(2) of the DESD Act. I must refuse leave to appeal if I find the "appeal has no reasonable chance of success."

²⁰ See *Osaj v Canada (Attorney General)*, 2016 FC 115, at paragraph 12.

[27] To meet this legal test, the Claimant must establish that the General Division may have made an error recognized by the law.²¹ If the Claimant's arguments do not deal with one of these errors, then appeal has no reasonable chance of success and I must refuse permission to appeal.²²

There is no arguable case that the General Division made a reviewable error

[28] In her written arguments to the Appeal Division, the Claimant argues the employer never asked or contacted her about the negative post online.²³ She restates what happened from her own perspective and disputes that she put an online negative review about the restaurant.

[29] The Claimant hasn't pointed out how the General Division may have made an error. Even so, I reviewed the file and the General Division decision to see if there was a reviewable error.

[30] The General Division had to decide whether the Commission had proven that the Claimant was dismissed due to misconduct according to the *Employment Insurance Act* (EI Act) and applicable Court decisions.²⁴

[31] The General Division correctly stated the law, which set out the legal test for misconduct and relevant case law in its decision.²⁵

[32] The General Division correctly identified that other claims against her employer such as overtime, tips and request for more hours of work were not before the Tribunal and it had no jurisdiction to deal with them.²⁶

²¹ See section 58(1) of the DESD Act.

²² See section 58(2) of the DESD Act.

²³ See page AD1-7.

²⁴ See section 30(1) of the *Employment Insurance Act* (EI Act) results in a disqualification to EI benefits if a claimant lost their job due to misconduct.

²⁵ See paragraphs 9, 32–35 of the General Division decision.

²⁶ See paragraph 40 of the General Division decision.

[33] The General Division's key findings included the following:

- The Claimant lost her job because of her misconduct.²⁷
- The reason she lost her job was because she posted a negative "Google review" about the employer's business (restaurant) using her daughter's online account on July 16, 2023.²⁸
- As well, she ignored her employer's instructions to stop discussing her concerns via a chat group for work (using "WhatsApp") and to wait until Monday, July 17, 2023, to meet with her manager to discuss her concerns.²⁹

[34] The General Division found that some evidence the Claimant gave was contradictory and inconsistent. As a result, it said that her credibility was in question.³⁰

[35] In the end, the General Division rejected the Claimant's evidence that she didn't know about the negative online review, wasn't responsible for it, and didn't discuss it with her employer.³¹ It provided reasons for making that finding.

[36] The General Division decided that because of the Claimant's own misconduct she lost her job. It said that she was not entitled to EI benefits.³²

[37] Based on my review, the General Division's key findings are supported by the evidence.

[38] There is no arguable case that the General Division made a reviewable error here.

[39] The General Division is the trier of fact and is entitled to weigh the evidence. It explained with reasons why it made the findings it did.

²⁷ See paragraph 41 of the General Division decision.

²⁸ See paragraph 29 of the General Division decision.

²⁹ See paragraph 23 of the General Division decision.

³⁰ See paragraphs 26–28 of the General Division decision.

³¹ See paragraphs 24, 29 and 37 of the General Division decision.

³² See paragraph 41 of the General Division decision.

[40] The Claimant appears to be rearguing her case because she is not satisfied with the outcome, but that isn't enough for me to intervene.

[41] It is important to know that an appeal to the Appeal Division is not a new hearing. I cannot reweigh the evidence in order to get a different conclusion that is more favourable for the Claimant.³³

[42] I reviewed the documents in the file, examined the decision under appeal, and I am satisfied that the General Division did not misinterpret or fail to properly consider any relevant evidence.³⁴ As well, there is no indication that the General Division didn't follow a fair process.

Conclusion

[43] Permission to appeal is refused because it has no reasonable chance of success. This means that the appeal will not proceed.

Solange Losier
Member, Appeal Division

³³ See *Garvey v Canada (Attorney General)*, 2018 FCA 118, at paragraph 11.

³⁴ See *Karadeolian v Canada (Attorney General)*, 2016 FC 165, at paragraph 10, which recommends doing such a review.