



Citation: *CS v Canada Employment Insurance Commission*, 2024 SST 708

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: C. S.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated April 11, 2024
(GE-24-621)

Tribunal member: Janet Lew

Decision date: June 21, 2024

File number: AD-24-341

Decision

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

Overview

[2] The Applicant, C. S. (Claimant), is appealing the General Division decision. The General Division found that the Respondent, the Canada Employment Insurance Commission (Commission) did not decide correctly when it refused her request for an extension of time to ask it to reconsider its initial decision.¹ Even so, the General Division found that the Claimant had not proven that she should have more time to ask the Commission to reconsider its initial decision.

[3] The Claimant argues that the General Division made a legal error. She says that her employer dismissed her for misconduct, but she denies that she committed any misconduct. She says that her employer wrongfully dismissed her. Her employer dismissed her for missing too much time off work. But the Claimant says that she had legitimate medical reasons for being off work. She notes that, up until her dismissal, she had always been an excellent employee.

[4] 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.² If the appeal does not have a reasonable chance of success, this ends the matter.³

[5] I am not satisfied that the appeal has a reasonable chance of success. Therefore, I am not giving permission to the Claimant to move ahead with the appeal.

¹ In its initial decision, the Commission found that the Claimant lost her job because of misconduct.

² See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

³ Under section 58(2) of the *Department of Employment and Social Development (DESD) Act*, I am required to refuse permission if I am satisfied “that the appeal has no reasonable chance of success.”

Issue

[6] Is there an arguable case that the General Division made a legal or factual error?

I am not giving the Claimant permission to appeal

[7] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success. A reasonable chance of success exists if the General Division may have made a jurisdictional, procedural, legal, or a certain type of factual error.⁴

[8] For these types of factual errors, the General Division had to have based its decision on an error that it made in a perverse or capricious manner, or without regard for the evidence before it.⁵

[9] I will also check to make sure that the General Division did not make any mistakes about the facts. For instance, I will make sure the General Division did not overlook any facts or make a factual finding that was not supported by the evidence.

The Claimant does not have an arguable case that the General Division based its decision on a legal error

[10] The Claimant does not have an arguable case that the General Division made a legal error. The Claimant does not say how the General Division made a legal error.

[11] The Social Security Tribunal asked the Claimant to describe any mistakes that the General Division might have made.⁶ But other than saying that the General Division made a legal error, she did not give any details or explain how it made any legal mistakes. For instance, she does not say that the General Division misinterpreted the law.

⁴ See section 58(1) of the DESD Act.

⁵ See section 58(1)(c) of the DESD Act.

⁶ See Social Security Tribunal's letter dated May 16, 2024. The Tribunal also attempted to contact the Claimant on May 22 and 23, 2024.

[12] Although the Claimant does not say how the General Division made a legal error, I will review the hearing file to make sure that the General Division did not make any legal mistakes.

- **The Claimant does not have an arguable case that the General Division decided the wrong issue**

[13] The Claimant denies that she committed any misconduct. But misconduct was not the issue before the General Division. The Claimant appealed the Commission's February 3, 2024, decision. The Commission told the Claimant that she was late in asking for a reconsideration and that it would not give her an extension of time to ask for a reconsideration. In other words, it would not be reconsidering its initial decision dated July 7, 2023.

[14] The General Division had to consider whether the Commission had appropriately decided against reconsidering its initial decision. It could not decide the misconduct issue because the Commission did not reconsider it as part of its February 3, 2024, decision. So, I am not satisfied that there is an arguable case that the General Division decided the wrong issue.

[15] The Claimant should have addressed whether the General Division made an error when it found that it could not give her an extension of time to ask the Commission to reconsider its decision.

- **The Claimant does not have an arguable case that the General Division made legal errors in its analysis**

[16] The General Division had to assess whether the Commission had appropriately decided against reconsidering its initial decision. This meant that it had to consider (1) whether the Commission had established that the Claimant was late and (2) whether it had properly applied the *Reconsideration Request Regulations* to the *Employment Insurance Act*.

- o **The Claimant was late when she asked the Commission to reconsider its initial decision**

[17] The General Division did not separately consider whether the Commission had established that the Claimant was late when she asked the Commission to reconsider its initial decision. But it is evident that the General Division agreed with the Commission that the Claimant was late.

[18] The Commission issued its initial decision on July 10, 2023.⁷ It told the Claimant that a party can ask for a reconsideration within 30 days from the date on which the initial decision was communicated to them.⁸ On January 15, 2024, the Claimant filed a Request for Reconsideration.⁹ She asked the Commission to reconsider its initial decision.

[19] The Commission decided that the Claimant had not filed her reconsideration request on time. More than 30 days had passed since the decision had been communicated to her.

[20] The Claimant denied that she was late, but the Commission pointed to evidence that indicated that she was aware of the initial decision. The General Division accepted this evidence and agreed with the Commission that the Claimant was late. This finding was consistent with the evidence.

- **The General Division found that the Commission had not properly applied the *Reconsideration Request Regulations***

[21] Next, the General Division had to look at whether the Commission had properly applied the *Reconsideration Request Regulations*. The *Reconsideration Request Regulations* applied because the Claimant made her reconsideration request after 30 days.¹⁰

⁷ See Commission's initial decision dated July 10, 2023, at GD 3-15.

⁸ See section 112(1)(a) of the *Employment Insurance Act*. The section requires a claimant to make a reconsideration request within 30 days after the day on which a decision is communicated to them.

⁹ See Claimant's Request for Reconsideration, filed January 15, 2024, at GD 3-16 to 3-17.

¹⁰ See section 112(1)(a) of the *Employment Insurance Act*. A claimant may make a request to the Commission for a reconsideration of a decision within 30 days after the day on which a decision is communicated to them, or (b) any further time that the Commission may allow.

[22] Under the *Reconsideration Request Regulations*, the Commission can allow a longer period to make a request for reconsideration of a decision if it is satisfied that “there is a reasonable explanation for requesting a longer period and the person has demonstrated a continuing intention to request a reconsideration.”¹¹

[23] The *Reconsideration Request Regulations* also say that if a claimant makes a request for reconsideration after 365 days, or if a claimant submits another application for benefits after the decision was communicated to them, the Commission also has to consider other circumstances when deciding whether it can allow a longer period to make a request for reconsideration of a decision.¹² These other circumstances are:

1. whether a Claimant’s request for a reconsideration has a reasonable chance of success, and
2. whether the claimant had shown that there would be no prejudice caused to any of the parties by allowing a longer period to make the request.

[24] In this case, the Claimant had submitted another application for benefits after the Commission had communicated its initial decision to her. The Claimant had filed an application for Employment Insurance sickness benefits.¹³ She received sickness benefits from August 20, 2023, to December 23, 2023. The Claimant does not dispute that she had filed an application for sickness benefits after the July 10, 2023, decision had been communicated to her.

[25] Because the Claimant had submitted another application for benefits after the initial decision had been communicated to her, the Commission had to consider the four circumstances.¹⁴ The Commission had to consider whether the Claimant had a reasonable explanation and a continuing intention, whether the request for

¹¹ See section 1(1) of the *Reconsideration Request Regulations*.

¹² See section 1(2)(a) and (b) of the *Reconsideration Request Regulations*.

¹³ See Supplementary Record of Claim dated February 1, 2024, at GD 3-18. See also Representations of the Commission to the Social Security Tribunal-Employment Insurance Section, at GD4.

¹⁴ See section 1(2)(b) of the *Reconsideration Request Regulations*.

reconsideration had a reasonable chance of success, and that no prejudice would be caused to other parties.

[26] The General Division found that the Commission had not considered the four circumstances, as it was required to do under the *Reconsideration Request Regulations*. It considered only whether the Claimant had a reasonable explanation any continuing intention. As a result, the General Division concluded that the Commission had not correctly decided whether the Claimant should get an extension of time to be able to ask the Commission to reconsider its decision.

[27] The General Division correctly identified the applicable law and then applied it to the facts.

- **The General Division made its own determination**

[28] Having determined that the Commission did not properly decide the Claimant's request for an extension, the General Division then had to "step into the Commission's shoes" to make the decision it says the Commission should have made in the first place.

[29] The General Division was careful to explain that this did not necessarily mean that it would arrive at a different outcome. It explained that it would make the decision "in the correct way"¹⁵ by moving through each of the factors and deciding whether the Claimant met them.

[30] So, the General Division considered each of the four circumstances. It considered whether the Claimant had a reasonable explanation for asking for more time, whether she had shown a continuing intention to ask for a reconsideration, whether she had shown that her request had a reasonable chance of success, and whether she had shown that there would be no prejudice caused to the Commission by allowing a longer period to make the request.

¹⁵ See General Division decision, at para 19.

[31] The General Division appropriately identified its role and then appropriately applied the law to the facts by examining whether the Claimant met the requirements under the *Reconsideration Request Regulations*.

- **Summary**

[32] The General Division appropriately determined that the *Reconsideration Request Regulations* applied because the Claimant made her reconsideration request after 30 days. It also appropriately identified the general and particular circumstances that the Commission had to consider when deciding whether to allow a longer period to make a request for reconsideration. Having determined that the Commission did not properly decide, it then appropriately examined whether the Claimant had met the requirements under the *Reconsideration Request Regulations*. It examined each of the circumstances and determined that the Claimant had not met them.

[33] The General Division properly interpreted and applied the law to the facts. I am not satisfied that there is an arguable case that the General Division made a legal error.

The Claimant does not have an arguable case that the General Division based its decision on a factual error

[34] The Claimant does not have an arguable case that the General Division made any mistakes about the facts. The General Division's findings were consistent with the evidence before it.

Conclusion

[35] 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