



Citation: *MD v Canada Employment Insurance Commission*, 2024 SST 826

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: M. D.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated May 17, 2024
(GE-24-882)

Tribunal member: Solange Losier

Decision date: July 16, 2024

File number: AD-24-419

Decision

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

Overview

[2] M. D. is the Claimant in this case. He applied for Employment Insurance (EI) regular benefits on May 21, 2022.

[3] The Claimant asked the Canada Employment Insurance Commission (Commission) to backdate his EI claim to an earlier date, to November 21, 2021.¹ This is called “antedating” your claim.

[4] The Commission refused to antedate the Claimant’s EI claim because it said that he didn’t have good cause for the delay in applying for EI benefits.² The Claimant appealed that decision to the General Division.

[5] The General Division concluded the same and dismissed the Claimant’s appeal.³

[6] The Claimant is now asking for permission to appeal the General Division’s decision to the Appeal Division.⁴ He argues that the General Division made an important error of fact.

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

Preliminary matters

[8] The Claimant has two separate files with the Appeal Division.⁵ This decision is only about this file (“the antedate file”).

¹ See page GD3-15. There is a typo because it says he wanted it backdated to November 21, 2011, but the correct date is November 21, 2021.

² See Commission’s initial decision at page GD3-19 and reconsideration decision at page GD3-54.

³ See General Division decision at pages AD1A-1 to AD1A-5.

⁴ See application to the Appeal Division at pages AD1-1 to AD1-7.

⁵ The other Appeal Division file is AD-24-310 and the legal issue was “late appeal”. I gave the Claimant permission to appeal in that file.

Issue

[9] Is there an arguable case that the General Division made an error of fact or any other reviewable error?

Analysis

[10] An appeal can proceed only if the Appeal Division gives permission to appeal.⁶ I must be satisfied that the appeal has a reasonable chance of success. There must be some arguable ground that the appeal might succeed.⁷

[11] The possible grounds of appeal to the Appeal Division are that the General Division:

- proceeded in a way that was unfair;
- acted beyond its powers or refused to exercise those powers;
- made an error of law;
- based its decision on an important error of fact.

[12] If the Claimant's appeal has no reasonable chance of success, then I must refuse permission to appeal.⁸

I am not giving the Claimant permission to appeal

[13] In his application to the Appeal Division, the Claimant argues that the General Division made an error of fact. He says that he was denied EI benefits and the error of fact happened when the issue changed from misconduct to antedate.⁹

[14] An error of fact happens when the General Division has "based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it."¹⁰

⁶ See section 56(1) of the *Department of Employment and Social Development Act* (DESD Act).

⁷ See *Osaj v Canada (Attorney General)*, 2016 FC 115, at paragraph 12.

⁸ See section 58(2) of the DESD Act.

⁹ See page AD1-3.

¹⁰ See section 58(1)(c) of the DESD Act.

[15] This involves considering some of the following questions:¹¹

- Does the evidence squarely contradict one of the General Division's key findings?
- Is there no evidence that could rationally support one of the General Division's key findings?
- Did the General Division overlook critical evidence that contradicts one of its key findings?

– **There is no arguable case that the General Division made an error of fact**

[16] The Claimant argues that the error of fact happened when the legal issue changed from misconduct to antedate.

[17] There is no indication that the Commission changed their decision from misconduct to antedate.¹² I think the Claimant might be mixing up two different decisions made by the Commission. Let me explain.

[18] As shown below, there were two different decisions made by the Commission. That followed by two separate General Division decisions (as well as, two different appeal files at the Appeal Division).

	Date of Commission's Initial decision	Date of Commission's Reconsideration decision	Date of General Division decision	General Division file number	Appeal Division file number
File 1 - "Misconduct"	July 18, 2022	December 18, 2022	April 5, 2024	GE-24-883 *late appeal issue	AD-24-310
File 2 - "Antedate"	December 14, 2023	February 16, 2024	May 17, 2024	GE-24-882	AD-24-419

¹¹ This is a summary of the Federal Court of Appeal's decision in *Walls v Canada (Attorney General)*, 2022 FCA 47 at paragraph 41.

¹² See Commission's initial decision at page GD3-19 and reconsideration decision at page GD3-54.

[19] There is no arguable case that the General Division made an error of fact (or any other reviewable error) when it only made a decision about the antedate issue. The only issue before the General Division member was the antedate file and the related reconsideration decision dated February 16, 2024.

– **There are no other reasons for giving the Claimant permission to appeal**

[20] In addition to the Claimant's arguments, I also reviewed the file record and General Division decision to see if there was an arguable case that it made any reviewable errors.¹³

[21] The *Employment Insurance Act* (EI Act) says in order to have your application antedated, you have to prove that you had good cause for the entire period of delay and that you qualified for EI benefits on the earlier date.¹⁴

[22] Claimants can show good cause by proving that they have done what a reasonable and prudent person would have done in the same circumstances throughout the entire period of delay.¹⁵

[23] Unless there are exceptional circumstances, a reasonable person is expected to take reasonably prompt steps to understand their entitlement to benefits and their obligations under the EI Act.¹⁶

[24] The General Division had to decide whether the Claimant had good cause for the delay in applying for EI benefits for the entire period of delay. In this case, it determined that the period of delay ran from November 21, 2021 to May 21, 2022.¹⁷

[25] The General Division decided that the Claimant did not have good cause for the entire period of delay.¹⁸ It considered his circumstances and reasons for the delay in

¹³ See *Karadeolian v Canada (Attorney General)*, 2016 FC 615, which recommends doing such a review.

¹⁴ See section 10(4) of the EI Act.

¹⁵ See *Canada (Attorney General) v Burke*, 2012 FCA 139, at paragraph 6.

¹⁶ See *Canada (Attorney General) v Kaler*, 2011 FCA 266 at paragraphs 4 and 11.

¹⁷ See paragraph 11 of the General Division decision.

¹⁸ See paragraphs 17, 23 and 26–27 of the General Division decision.

applying for EI benefits but found that they were not exceptional and did not excuse his failure to take reasonably prompt steps.¹⁹

[26] There is no arguable case that the General Division made any other reviewable errors.²⁰ Its key findings are consistent with the evidence. I did not find any key evidence that the General Division might have ignored or misinterpreted. It set out the correct legal test to be applied in its decision.²¹ It only decided the issues it had the authority to decide. And there is no indication that the process was unfair in some way.

Conclusion

[27] This appeal does not have a reasonable chance of success. Permission to appeal is refused. This means that the appeal will not proceed.

Solange Losier
Member, Appeal Division

¹⁹ See paragraphs 19–22 and 24–25 of the General Division decision.

²⁰ See paragraph 58(1) of the DESD Act.

²¹ See paragraphs 8–13 of the General Division decision.