



Citation: *AC v Canada Employment Insurance Commission*, 2024 SST 857

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 May 15, 2024
(GE-24-241)

Tribunal member: Stephen Bergen

Decision date: July 23, 2024

File number: AD-24-414

Decision

[1] I am refusing leave (permission) to appeal. The appeal will not proceed.

Overview

[2] Adam Coholic is the Applicant. This application concerns his claim for Employment Insurance (EI) benefits, so I will call him the Claimant.

[3] The Respondent, the Canada Employment Commission (Commission), initially denied his claim. It reconsidered its decision on April 29, 2023, in response to the Claimant's request, and established a benefit period as of February 2023. At about the same time, the Claimant was leaving the Country. He did not learn about the reconsideration decision until he returned to Canada in September 2023. He asked the Commission to backdate his claim reports to the beginning of his benefit period.

[4] The Commission refused, saying that he did not have good cause for the delay in filing his claim reports. It also said that he was not entitled to benefits from May 2, 2023, until September 1, 2023, because he was out of Canada.

[5] The Claimant asked the Commission to reconsider its refusal to allow the late claim reports only. The Commission would not change its decision.

[6] The Claimant appealed the Commission's reconsideration decision to the General Division of the Social Security Tribunal. The General Division dismissed his appeal because he did not have good cause for the delay after the Commission reconsidered. This meant that the Claimant did not have good cause for the delay throughout the period of the delay, and that the Commission could not backdate his claim reports to pay retroactive benefits.

[7] Now the Claimant is asking the Appeal Division for permission to appeal the decision of the General Division.

[8] I am not giving the Claimant permission to appeal. The Claimant has not made out an arguable case that the General Division made important error of fact.

Issue

[9] Is there an arguable case that the General Division made an important error of fact when it found that the Claimant failed to take reasonably prompt steps to understand his rights and obligations?

I am not giving the Claimant permission to appeal

General Principles

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

[11] 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.¹

[12] 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 grounds of appeal. Other court decisions have equated a reasonable chance of success to an "arguable case."²

¹ 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).

² See *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; and *Ingram v Canada (Attorney General)*, 2017 FC 259.

Important error of fact

[13] There is no arguable case that the General Division made an important error of fact.

[14] An important error of fact is where the General Division bases its decision on a finding of fact that ignores or misunderstands relevant evidence, or where its finding does not rationally follow from the evidence.³

[15] The law says that a claim for benefits for a week of unemployment in a benefit period must be made within three weeks of the week for which the benefits are claimed.⁴ The Claimant filed his claim in February 2023 but did not try to file weekly claim reports until after he contacted the Commission in September 2023. He wanted the Commission to backdate his benefits to the start of his benefit period in February 2023.

[16] The issue that the General Division needed to decide was whether the Claimant had “good cause” for delaying filing his claim reports.⁵

[17] According to case law, a claimant must act as a reasonable and prudent person would act in similar circumstances.⁶ It also says that they must show that they took reasonably prompt steps to understand their entitlement to benefits and obligations under the law, or show that their failure to do so was justified by exceptional circumstances.⁷ Ignorance of the law, even if coupled with good faith, is not sufficient to establish good cause.⁸

³ Section 58(1)(c) of the DESDA describes the error more precisely. It says that it is where, “the General Division 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.”

⁴ See Section 26(1) of the *Employment Insurance Regulations* (Regulations).

⁵ See section 10(5) of the *Employment Insurance Act* (EI Act).

⁶ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336

⁷ See *Canada (Attorney General) v Albrecht*, [1985] 1 F.C. 170; *Canada (Attorney General) v Kokavec*, 2008 FCA 307; *Paquette v Canada (Attorney General)*, 2006 FCA 309.

⁸ See *Canada (Attorney General) v Kaler*, 2011 FCA 266.

[18] The Claimant argues that he did what a reasonable person would do. He argues that a reasonable person would expect the Commission to tell them if they needed to file weekly claim reports while they were waiting for a reconsideration decision.

[19] In fact, the General Division accepted his evidence that the Commission did not tell him that he needed to file reports before his claim was approved. It accepted that he was told he did not need to do anything while his reconsideration request was pending.⁹ The General Division appears to have recognized that it would not be reasonable to expect him to file claim reports before the Commission reconsidered his application because the Commission would not have accepted them.¹⁰

[20] The General Division decision was based on the Claimant's delay **after** the April 28, 2023, reconsideration decision. The law would have allowed him another three weeks after April 28 to catch up his reporting, but he did not try to file reports until September 5, 2023. He did not actually file any report until October 20, 2023.

[21] The General Division found that he did not act reasonably by not checking on the status of his reconsideration from the date of the reconsideration decision until he returned to Canada in September 2023.

[22] The Claimant has not pointed to any evidence that the General Division ignored or misunderstood, or shown how its decision does not flow rationally from the evidence that was available to it. He may disagree with how the General Division weighed or evaluated the evidence, but the General Division is the primary finder of fact. It is not the Appeal Division's role to reweigh the evidence.¹¹

[23] If the Claimant is appealing because he disagrees with how the General Division interpreted "reasonable," or with its finding that his circumstances were not "exceptional," he is not making an argument that the General Division made an error of

⁹ See footnote 25 to para 36 of the General Division decision.

¹⁰ See para 35-37 of the General Division decision.

¹¹ See for example: *Hideq v Canada (Attorney General)*, 2017 FC 439, *Parchment v Canada (Attorney General)*, 2017 FC 354, *Johnson v Canada (Attorney General)*, 2016 FC 1254, *Marcia v Canada (Attorney General)*, 2016 FC 1367.

fact. This would be a disagreement with how the General Division applied settled principles of law to the facts; what is called an “error of mixed fact and law.” The Appeal Division has no authority to intervene on questions of mixed fact and law.¹²

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

Conclusion

[25] I am refusing permission to appeal. This means that the appeal will not proceed.

Stephen Bergen
Member, Appeal Division

¹² See *Quadir v Canada (Attorney General)*, 2018 FCA 21.