



Citation: *EM v Canada Employment Insurance Commission*, 2024 SST 1311

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: E. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated September 13, 2024
(GE-24-2283)

Tribunal member: Elizabeth Usprich

Decision date: October 30, 2024

File number: AD-24-622

Decision

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

Overview

[2] E. M. is the Applicant. She applied for Employment Insurance (EI) benefits on November 22, 2022. She asked to have her application antedated (backdated) to October 17, 2021.

[3] The Canada Employment Insurance Commission (Commission) denied the Applicant's request. The Social Security Tribunal (Tribunal) General Division agreed with the Commission.¹ The Applicant has asked for permission to appeal the General Division's decision.

[4] The Applicant says the General Division made an error of law. She says the General Division didn't properly apply the legal test for antedate.

[5] I am denying the Applicant's request for permission to appeal because there is no reasonable chance of success.

Preliminary matters

– The Applicant didn't specify an error the General Division made

[6] On September 23, 2024, I wrote the Applicant and explained, "leave to appeal can only be granted if you raise an arguable case about how the General Division made an error (mistake). This means that you need to explain **HOW** the General Division made an error."²

¹ The General Division also noted that even if the claim were antedated, it didn't necessarily mean the Applicant would get EI benefits. The reason for the Applicant's separation would need to be considered by the Commission.

² Under section 4 of the Notice of Appeal form to the Appeal Division, it explains that permission to appeal must first be granted. It says there must be an arguable case the General Division made an error and lists the errors that can be considered. See AD1-1, the Applicant filled out an application to the General Division but submitted that to the Appeal Division. In the September 23, 2024 letter, I explained "leave to appeal" and explained the errors I could consider.

[7] The Applicant sent three submissions. All of the submissions have been considered.³

– **New evidence won't be considered**

[1] The Applicant says she had a medical issue during the time she delayed applying for EI benefits.⁴ The Appeal Division can't consider new evidence unless it falls under an exception.⁵ In this case, the Applicant is not giving general background information. She is also not providing the information to show the General Division made an error. She is giving information to help explain why she delayed in filing a claim for EI benefits.

[8] An appeal, at this level, is not a new hearing based on new evidence. It is a review of the General Division's decision based only on the evidence it had.⁶ This means I am only considering the evidence that was before the General Division.

Issue

[9] Is there an arguable case that the General Division made an error of law when it applied the legal test of good cause and noted the Applicant had to act as a reasonable and prudent person would have in similar circumstances?

I am not giving the Applicant permission to appeal

[10] An appeal can only go ahead if the Appeal Division gives an applicant permission to appeal.⁷ I have to be satisfied the appeal has a reasonable chance of success.⁸ That means, there has to be an arguable ground upon which the appeal might succeed.⁹

³ See the Applicant's submissions: AD1A dated September 25, 2024, AD1B dated September 25, 2024, and AD1C dated October 7, 2024.

⁴ See AD1C-3 of the Applicant's explanation about the General Division's error(s).

⁵ See *Sibbald v Canada (Attorney General)*, 2022 FCA 157 at paragraph 37. The exceptions to the general rule are: general background information; to bring a procedural defect to the attention of the Tribunal; or to highlight the complete absence of evidence.

⁶ See *Gittens v Canada (Attorney General)*, 2019 FCA 256 at paragraph 13.

⁷ See section 56(1) of the Department of *Employment and Social Development Act* (DESD Act).

⁸ See section 58(2) of the DESD Act.

⁹ See *Osaj v Canada (Attorney General)*, 2016 FC 115 at paragraph 12.

[11] There are only certain grounds of appeal that the Appeal Division can consider.¹⁰ Briefly, the Applicant has to show that the General Division did one of the following:

- It acted unfairly in some way.
- It decided an issue it shouldn't have, or didn't decide an issue it should have.
- It made an error of law.
- It based its decision on an important error of fact.

[12] So, for the Applicant's appeal to go ahead, I have to find there is a reasonable chance of success on any one of those grounds. The Applicant says she thinks the General Division made a mistake in law.¹¹ She says the reasonable and prudent person test isn't right.

There is no arguable case the General Division made an error of law when it applied the legal test of good cause which includes a reasonable person standard

[13] The Applicant agrees she applied for EI benefits late.¹² The General Division correctly stated what the legal test is to have a claim antedated.¹³ It had to consider whether the Applicant had "good cause" for the period of the delay. It is settled law that good cause is shown by acting as a reasonable and prudent person would have in similar circumstances.¹⁴

¹⁰ See section 58(1) of the DESD Act.

¹¹ See AD1C-3 the Applicant's submission about the General Division's error.

¹² Listen to the General Division hearing recording at 00:06:24.

¹³ See the General Division decision at paragraphs 12 and 13. Also listen to the General Division hearing recording at 00:10:40.

¹⁴ The Federal Court of Appeal has noted this repeatedly. For example, see *Canada (Attorney General) v Albrecht*, 1985 CanLII 5582 (FCA); *Canada (Attorney General) v Innes*, 2010 FCA 341 at paragraph 2; and *Canada (Attorney General) v Burke*, 2012 FCA 139 at paragraph 14.

[14] The General Division explained very specifically the test it had to apply.¹⁵ This included that the Applicant had to show she acted as a reasonable person in her circumstances would have.

[15] The Applicant said she was suspended from her work because she wasn't vaccinated.¹⁶ She said she had trauma at the time and the trauma was extreme.¹⁷

[16] The Applicant said based on what she read on the EI website, and what she heard on the news, she didn't think she would be entitled to EI benefits.¹⁸ The Applicant said what her financial stress was like at the time.¹⁹ She said that she had to move, ran through her savings, and told the General Division her different sources of income.

[17] The General Division summarized what it heard and the Applicant confirmed it was accurate.²⁰ Ultimately, the Applicant said that because of what she read on the EI website and what she heard through word of mouth, she thought there was no point in applying. The Applicant admitted that she never contacted anyone from Service Canada because she was angry at the time.²¹

[18] The Applicant now says that this was acting as a reasonable person would have acted.²² She says it was reasonable not to apply. She says people don't apply for programs they believe they are ineligible for. The Applicant had noted all of these things to the General Division. It considered her arguments.²³

[19] The General Division found the Applicant took over 13 months to take any action.²⁴ It said the Applicant could have contacted Service Canada to ask questions. Or, she could have just applied for EI benefits to find out if she were successful.²⁵

¹⁵ Listen to the General Division hearing recording at 00:10:40.

¹⁶ Listen to the General Division hearing recording at 00:15:15.

¹⁷ Listen to the General Division hearing recording at 00:15:54.

¹⁸ Listen to the General Division hearing recording at 00:15:15 and 00:17:10.

¹⁹ Listen to the General Division hearing recording at 00:18:40 to 00:24:00.

²⁰ Listen to the General Division hearing recording at 00:26:23 to 00:27:45.

²¹ Listen to the General Division hearing recording at 00:30:23.

²² See AD1C-4 the Applicant's submission.

²³ See the General Division decision at paragraph 18.

²⁴ See the General Division decision at paragraph 14.

²⁵ See the General Division decision at paragraphs 25, 28 and 48.

[20] As the General Division notes, good faith and ignorance of the law don't give one good cause.²⁶ The law expects people to take steps to find out their rights, and obligations, under the law.²⁷ The General Division says a reasonable person wouldn't have relied on information from acquaintances or unverified assumptions.²⁸

[21] The General Division found there were no exceptional circumstances that applied in the Applicant's case.²⁹

[22] All of this means the General Division stated and applied the correct legal test.³⁰ It listened to what the Applicant said. It then applied the law to the facts of the case. The Appeal Division isn't a redo of what happened at the General Division. Unless there is an error, I can't intervene (step in).³¹ There is no arguable case that the General Division made an error of law.

– **There are no additional errors in the General Division decision**

[23] Because the Applicant is self-represented, I took my own look at the appeal. I have reviewed the file, listened to the hearing recording, and looked at the decision the Applicant is appealing. I haven't found any reviewable error that the General Division may have made.³²

Conclusion

[24] Permission to appeal is refused. This means that the appeal will not proceed.

Elizabeth Usprich
Member, Appeal Division

²⁶ See the General Division decision at paragraph 36. The Federal Court of Appeal has noted this in *Canada (Attorney General) v Kaler*, 2011 FCA 266 at paragraph 4.

²⁷ See the General Division decision at paragraph 50.

²⁸ See the General Division decision at paragraph 41 and 49.

²⁹ Listen to the General Division hearing recording at 00:25:15.

³⁰ The Applicant's belief that what she did was reasonable was weighed by the General Division. I can't just reweigh the facts before the General Division unless there is an error.

³¹ See *Uvaliyev v Canada (Attorney General)*, 2021 FCA 222 at paragraph 7; and *Sibbald v Canada (Attorney General)* 2022 FCA 157 at paragraph 27.

³² The Federal Court has said I must do this in decisions like *Griffin v Canada (Attorney General)*, 2016 FC 874 and *Karadeolian v Canada (Attorney General)*, 2016 FC 615.