



Citation: *IK v Canada Employment Insurance Commission*, 2025 SST 5

Social Security Tribunal of Canada Appeal Division

Extension of Time and Leave to Appeal Decision

Applicant: I. K.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated December 21, 2023
(GE-23-3240)

Tribunal member: Solange Losier

Decision date: January 3, 2025

File number: AD-24-868

Decision

[1] An extension of time to apply to the Appeal Division is granted. Leave (permission) to appeal is refused. The appeal won't proceed.

Overview

[2] I. K. is the Claimant in this case. He applied for Employment Insurance (EI) benefits on August 18, 2023. He asked the Canada Employment Insurance Commission (Commission) to backdate his application to March 12, 2023. This is called “antedating” your application.

[3] The Commission refused to antedate the claim to March 12, 2023, because it said he didn't have good cause for the delay in applying for benefits.¹

[4] The General Division concluded the same.² It dismissed the Claimant's appeal because he hadn't shown good cause for the delay in claiming benefits. It found his circumstances weren't exceptional.

[5] The Claimant is now asking for permission to appeal to the Appeal Division.³ He argues that the General Division made errors. I am denying the Claimant's request for permission to appeal because it has no reasonable chance of success.

Issues

[6] 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?

¹ See Commission's initial and reconsideration decisions at GD3-21 and GD3-48.

² See General Division decision at pages AD1A-1 to AD1A-7.

³ See application to the Appeal Division at pages AD1-1 to AD1-8.

The application to the Appeal Division was filed late

[7] The Claimant identified that he received the General Division's decision on December 23, 2023.⁴ This is the date the decision was communicated to him.

[8] The deadline to file an application to the Appeal Division is 30 days after the day on which the General Division decision was communicated to him in writing.⁵ An application cannot proceed if it was made more than a year after the General Division decision was communicated.⁶

[9] This means that the 30 day deadline to file his application to the Appeal Division was January 23, 2024. And the one year final deadline was December 23, 2024.

[10] The Tribunal received the Claimant's application to the Appeal Division via email on December 21, 2024. This is the date the application was acknowledged as received by the Tribunal.⁷

[11] I find that the Claimant filed his application to the Appeal Division late. The 30 day deadline was January 23, 2024, and he filed it on December 21, 2024. However, his application was made under the one year time limit.

I am extending the time for filing the application

[12] When deciding whether to grant an extension of time, I have to consider whether the Claimant has a reasonable explanation for why the application is late.⁸

[13] The Claimant says that the reason for the delay was because he was frustrated, disappointed and hopeless when he lost his job.

⁴ See page AD1-1.

⁵ See section 57(1)(a) of the *Department of Employment and Social Development Act* (DESD Act).

⁶ See section 57(2) of the DESD Act.

⁷ See paragraph 19(2) of the *Social Security Tribunal Rules of Procedure* (SST Rules).

⁸ See section 27(2) of the *SST Rules*.

[14] I find that the Claimant has provided a reasonable explanation for the delay in filing his application to the Appeal Division. So, I am extending the time for filing the application.

Analysis

[15] An appeal can only proceed if the Appeal Division gives permission to appeal.⁹ I must be satisfied that the appeal has a reasonable chance of success.¹⁰ This means that there must be some arguable ground upon which the appeal might succeed.¹¹

[16] I can only consider certain types of errors. I have to focus on whether the General Division could have made one or more of the relevant errors (this is called the “grounds of appeal”).¹²

[17] The possible grounds of appeal to the Appeal Division are that the General Division did one of the following:¹³

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

I am not giving the Claimant permission to appeal

– The Claimant argues that the General Division made errors

[18] The Claimant is asking for permission to appeal for several reasons.¹⁴ I’ve summarized his main arguments as follows:

- He argues that the supporting documents he provided weren’t considered
- He didn’t want to claim EI benefits, so he was looking for a new job

⁹ See section 56(1) of the *DESD Act*.

¹⁰ See section 58(2) of the *DESD Act*.

¹¹ See *Osaj v Canada (Attorney General)*, 2016 FC 115, at paragraph 12.

¹² See section 58(1) of the *DESD Act*.

¹³ See section 58(1) of the *DESD Act*.

¹⁴ See page AD1-3.

- He was frustrated, disappointed and hopeless when he lost his job
- He has been working since he was 18 years old and contributing by paying taxes
- And the purpose of EI benefits is to provide support when a job is lost

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

[19] The Claimant hasn't pointed out what type of error he thinks the General Division made. Even so, I've reviewed the General Division decision and the file record to see whether there was an arguable case that it made any of the above reviewable errors.

[20] The General Division had to decide whether the Claimant could antedate his application for EI benefits for the period between March 12, 2023, to August 18, 2023.¹⁵ To do so, the Claimant had to show that he had "good cause" for filing his application for EI benefits late for the entire period of delay.¹⁶

[21] To establish good cause, the Claimant has to show that he did what a reasonable person in his situation would have done in similar circumstances to satisfy himself of his rights and obligations under the law.¹⁷ This includes an obligation to take reasonably prompt steps to determine if they qualified for EI benefits.

[22] There is no arguable case that the General Division made any reviewable errors, so I am not giving the Claimant permission to appeal. My reasons follow.

[23] First, the Claimant's arguments to the Appeal Division are focused on restating the reasons he had good cause.

[24] The General Division is the trier of fact. It considered the Claimant's reasons for the delay in filing his application for benefits.¹⁸ And it concluded that his reasons didn't

¹⁵ See paragraph 11 of the General Division decision.

¹⁶ See section 10(4) of the *Employment Insurance Act* (EI Act).

¹⁷ See *Canada (Attorney General) v Kaler*, 2011 FCA 266 at paragraph 4 and *Canada (Attorney General) v Mendoza*, 2021 FCA 36 at paragraphs 13 and 14.

¹⁸ See paragraph 14 of the General Division decision.

amount to good cause for the delay.¹⁹ It also decided that his circumstances weren't exceptional.²⁰

[25] The General Division found that a reasonable person in similar circumstances would have called Service Canada to inquire about the delay of his Record of Employment, particularly since he was familiar with EI benefits from having received it in the past.²¹

[26] The Claimant submitted 93 pages to the General Division.²² The documents included a passport photo, pay stubs and several copies of his bank statements.

[27] There is no arguable case that the General Division based its decision on an error of fact.²³ The General Division didn't ignore any of the supporting documents he provided, many of them were not relevant to the issues it had to decide.

[28] The General Division did note that he sent copies of bank statements to show that he had significant financial issues.²⁴ Even though he made an innocent mistake, it concluded that it wasn't an exceptional circumstance that excused him from doing what he needed to do to get EI benefits.

[29] I acknowledge that the Claimant disagrees with the General Division's decision. However, I can't reweigh the evidence in order to come to a different conclusion for the Claimant. The Appeal Division has a limited role, so I can't intervene in order to reweigh the evidence about the application of settled legal principles to the facts of the case.²⁵

[30] There is no arguable case that the General Division made an error of law.²⁶ The General Division correctly stated and applied the law in its decision.²⁷ It identified the applicable section of the *Employment Insurance Act* (EI Act) that says in order to have

¹⁹ See paragraphs 16, 19, 24, 26, 32 and 34 of the General Division decision.

²⁰ See paragraphs 29–31 of the General Division decision.

²¹ See paragraph 27 of the General Division decision.

²² See pages GD6-1 to GD6-93.

²³ See section 58(1)(c) of the *DESD Act*.

²⁴ See paragraphs 30–31 of the General Division decision.

²⁵ See *Garvey v Canada (Attorney General)*, 2018 FCA 118, at paragraph 5.

²⁶ See section 58(1)(b) of the *DESD Act*.

²⁷ See paragraphs 8, 10–13 and 26 of the General Division decision.

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.

[31] The Claimant referred to a similar case involving another person who delayed applying for benefits, and it was considered good cause because there were exceptional circumstances.

[32] The General Division considered the Tribunal case provided by the Claimant.²⁸ It explained that the facts of that case were different because that person had a mental health illness which prevented them from taking reasonably prompt steps.

[33] The General Division wasn't obligated to follow that Tribunal case and it explained with reasons why it was factually different.

[34] There is no arguable case that the General Division made an error of jurisdiction.²⁹ The General Division only decided the issues it had to decide (antedate) and didn't decide any issues that it had no authority to decide.

[35] The hearing was held in-person and lasted around 54 minutes. The Claimant attended the hearing and testified. I've found no indication that the General Division didn't follow a fair process in this case, so there is no arguable case under this ground either.³⁰

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

[36] I reviewed the file, examined the decision under appeal and didn't find any key evidence that the General Division might have ignored or misinterpreted.³¹

²⁸ See paragraphs 28–29 of the General Division decision.

²⁹ See section 58(1)(a) of the DESD Act.

³⁰ See section 58(1)(a) of the DESD Act.

³¹ See *Karadeolian v Canada (Attorney General)*, 2016 FC 615, which recommends doing such a review.

Conclusion

[37] An extension of time is granted. Permission to appeal is refused.

[38] This means that the Claimant's appeal won't proceed. The appeal has no reasonable chance of success.

Solange Losier
Member, Appeal Division