



Citation: *RW v Canada Employment Insurance Commission*, 2025 SST 77

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: R. W.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated January 7, 2025
(GE-24-3683)

Tribunal member: Solange Losier

Decision date: February 4, 2025

File number: AD-25-73

Decision

[1] Leave (permission) to appeal is refused. The appeal won't proceed.

Overview

[2] R. W. is the Claimant in this case. He applied for Employment Insurance regular benefits (benefits) in November 2020. But he didn't complete any biweekly claim reports, so he never got paid any benefits. And he didn't realize he wasn't paid any benefits because he wasn't checking his bank account.

[3] A few years later, in November 2023 and April 2024, the Claimant asked the Commission to backdate his claim reports to an earlier date in November 2020 (this is also called "antedating").

[4] The Canada Employment Insurance Commission (Commission) decided that they were unable to pay the Claimant benefits from November 8, 2020, to April 23, 2022, because he hadn't completed his claim reports in a timely manner while in a work-sharing program.¹

[5] The General Division concluded that he didn't have good cause for the entire period of delay.² It found that his circumstances weren't exceptional, so his appeal was dismissed.

[6] The Claimant is now asking for permission to appeal.³ He argues that the General Division didn't follow a fair process.

[7] I'm denying permission to appeal because the Claimant's appeal has no reasonable chance of success.

¹ See Commission's initial and reconsideration decision at pages GD3-16 and GD3-21.

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

³ See Application to the Appeal Division at pages AD1-1 to AD1-6.

Issue

[8] Is there an arguable case that the General Division failed to follow a fair process?

Analysis

[9] An appeal can proceed only if the Appeal Division gives permission to appeal.⁴ I must be satisfied that the appeal has a reasonable chance of success.⁵ This means that there must be some arguable ground that the appeal might succeed.⁶

[10] I can only consider certain types of errors.⁷ If the General Division failed to follow a fair process, then I can intervene.⁸

I am not giving the Claimant permission to appeal

[11] The Claimant argues that the General Division didn't follow a fair process for the following reasons:⁹

- he didn't ask for extra time after the hearing, but it was given to him;
- he waited patiently for a response until April and again in November, but nobody contacted him, and
- he told [the General Division] about his illness causing delays.

– There is no arguable case that the General Division didn't follow a fair process

[12] The principles of natural justice are concerned with procedural fairness. The right to a fair hearing before the Tribunal includes certain procedural protections. For example, the right to an impartial (unbiased) decision maker, the right of a party to know the case against them and to be given an opportunity to respond to it.

⁴ See section 56(1) of the *Department of Employment and Social Development Act* (DESD Act).

⁵ See section 58(2) of the DESD Act.

⁶ See *Osaj v Canada (Attorney General)*, 2016 FC 115, at paragraph 12.

⁷ See section 58(1) of the DESD Act.

⁸ See section 58(1)(a) of the DESD Act.

⁹ See page AD1-2.

[13] There is no arguable case that the General Division didn't follow a fair process. My reasons follow.

[14] First, the Claimant had told the General Division that he hadn't received some of the file documents. He wanted to proceed with the hearing, so it went ahead. The General Division made sure that the missing documents were sent to him (at his preferred address) after the hearing and gave him additional time to review and comment on them before making its decision. The General Division wrote about this in its decision and noted that it had also reviewed the relevant documents with him at the in-person hearing.¹⁰

[15] The record shows that the Claimant received those documents and that the General Division gave him a few extensions to reply, but he didn't provide one.¹¹ The General Division only issued its decision on January 6, 2025, which was a few days after the final deadline to reply.¹²

[16] There is no indication that the General Division failed to follow a fair process here. It recognized that he didn't have some of the file documents, it made sure that he got them and gave him enough time to review and comment on them. The General Division was free to proceed and render a decision after the deadline.

[17] Second, the General Division decided that the Claimant didn't have good cause during the delay because he didn't do what a reasonable and prudent person would have done to find out his rights and obligations throughout the entire period of delay.¹³ It said that after he applied for benefits in November 2020, he didn't check his bank account to make sure that he was getting benefits.¹⁴ It found that he had failed to inquire about his benefits over a three year period.¹⁵

¹⁰ See paragraphs 11–13 of the General Division decision.

¹¹ See Tribunal letters at pages GD5-1 to GD5-3; GD6-1 to GD6-3 and GD7-1 to GD7-3.

¹² The final deadline to reply was January 3, 2025, see page GD7-1.

¹³ See paragraph 37 of the General Division decision; section 10(5) of the *Employment Insurance Act* and *Canada (Attorney General) v Burke*, 2012 FCA 139, at paragraph 5.

¹⁴ See paragraph 27 of the General Division decision.

¹⁵ See paragraph 32 of the General Division decision.

[18] The General Division was in fact aware of the subsequent delay period between November 30, 2023 to April 4, 2024.¹⁶ However, it found that he had waited four months to follow up on his initial antedate request, so he again hadn't acted promptly to understand his rights and entitlements.¹⁷

[19] The Claimant appears to be rearguing his case when he says that "he waited patiently for a response until April and again in November, but nobody contacted him."

[20] The General Division is the trier of fact, and it concluded based on the evidence before it, that he didn't have good cause because he didn't act like a reasonable and prudent person would have in similar circumstances. I can't intervene in the General Division's conclusion where it applies settled law to the facts.¹⁸ As well, its key findings are consistent with the evidence in the file.

[21] Third, the General Division considered the Claimant's specific circumstances. It was aware that he became ill in the summer of 2023 and that he wasn't back at work. Even so, it found that his particular circumstances weren't exceptional and didn't explain why it took him so long to ask for his claim to be antedated.¹⁹

[22] I listened to the audio recording of the General Division hearing, and the Claimant didn't say that his illness caused or contributed to the delays in this case. He spoke about his illness in more general terms. The General Division was free to conclude that his illness didn't cause or contribute to the delay and that it wasn't an exceptional circumstance.

[23] It's important to know that an appeal to the Appeal Division of the Tribunal isn't a new hearing. I can't reweigh the evidence in order to get a different conclusion that is more favourable for the Claimant.

¹⁶ The Claimant had asked the Commission to antedate on November 30, 2023 and on April 4, 2024.

¹⁷ See paragraphs 34–35 of the General Division decision and

¹⁸ See *Garvey v Canada (Attorney General)*, 2018 FCA 118, at paragraph 11.

¹⁹ See paragraph 36 of the General Division decision.

[24] The Appeal Division's mandate is limited and a disagreement with the outcome isn't a reviewable error.²⁰ So, I can't intervene in the General Division's decision in this case.

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

[25] As noted above, I've reviewed the General Division decision, the file record and the audio recording. I didn't find any key evidence that the General Division might have ignored or misinterpreted.²¹ As well, the General Division correctly stated the applicable law for antedate cases and relevant case law in its decision.²²

Conclusion

[26] This appeal has no reasonable chance of success.

[27] Permission to appeal is refused. This means that the Claimant's appeal won't proceed.

Solange Losier
Member, Appeal Division

²⁰ See section 58(1) of the DESD Act.

²¹ See *Karadeolian v Canada (Attorney General)*, 2016 FC 615, which recommends doing such a review.

²² See paragraphs 3; 16–18 of the General Division decision.