Citation: *HK v Canada Employment Insurance Commission*, 2025 SST 66

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	H. K.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated December 16, 2024 (GE-24-3736)

Tribunal member:	Elizabeth Usprich
Decision date:	January 30, 2025
File number:	AD-25-4

Decision

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

Overview

[2] H. K. is the Applicant. He lost his job on July 16, 2023. He applied for Employment Insurance (EI) benefits on July 11, 2024.

[3] The Canada Employment Insurance Commission (Commission) decided that because the Applicant had waited so long to apply for EI benefits, he didn't have enough hours in his qualifying period.[1] So, the Applicant asked to have his EI claim antedated (backdated).

[4] The Commission said the Applicant didn't have good cause for delay in applying for EI benefits. This meant the Applicant couldn't establish a claim for EI benefits. The Applicant appealed this decision to the Social Security Tribunal (Tribunal) General Division. The General Division agreed with the Commission.

[5] The Applicant has asked for permission to appeal the General Division's decision.

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

Issues

[7] Is there an arguable case the General Division made an important error of fact when it decided the Applicant didn't have good cause for delay when he applied for EI benefits almost a year after he lost his job?

[8] Is there an arguable case the General Division made a reviewable error?

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[1] The qualifying period is usually the 52 weeks an EI claim could be established.

I am not giving the Applicant permission to appeal

[9] An appeal can only go ahead if the Appeal Division gives an applicant permission to appeal.[2] I have to be satisfied that the appeal has a reasonable chance of success.[3] There has to be an arguable ground upon which the appeal might succeed.[4]

[10] There are only certain grounds of appeal that the Appeal Division can consider.[5] Briefly, the Applicant has to show 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. This is also called an error of jurisdiction.
- It made an error of law.
- It based its decision on an important error of fact.

[11] For the Applicant's appeal to go ahead, I have to find there is a reasonable chance of success on any of those grounds. The Applicant says the General Division made an important error of fact. He says his behaviour was reasonable. 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.

The General Division didn't make any reviewable errors

[12] The General Division hasn't made an important error of fact, it applied the correct legal test, it made the decisions it had to and provided the Applicant with a fair process.

[13] The Applicant argues that his actions should be considered reasonable. The General Division considered the Applicant's arguments. So, it can't be said that it overlooked, misunderstood, or ignored the Applicant's arguments. It seems that the

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[2] See section 56(1) of the Department of *Employment and Social Development Act* (DESD Act).
[3] See section 58(2) of the DESD Act.
[4] See *Hazaparu v Canada (Attorney General)*, 2024 FC 928 at paragraph 13; *O'Rourke v Canada (Attorney General)*, 2018 FC 498; *Osaj v Canada (Attorney General)*, 2016 FC 115 at paragraph 12; and *Ingram v Canada (Attorney General)*, 2017 FC 259 at paragraph 16.
[5] See section 58(1) of the DESD Act. The grounds listed are also known as errors.

Applicant is attempting to reargue his case to the Appeal Division, with the hope of a different outcome. It isn't the role of the Appeal Division to reweigh the evidence that was before the General Division.

– **There was no important error of fact**

[14] An error of fact happens when the General Division makes its decision based on an erroneous (wrong) finding of fact that was "made in a perverse or capricious manner or without regard for the material before it".[6] So, the General Division had to ignore, misunderstand or overlook the evidence in some way.

[15] The Applicant lost his job in July 2023. He applied for EI benefits in July 2024. He waited almost a year to apply for EI benefits. The qualifying period is usually the 52 weeks before you establish a benefit period. Because of his delay in applying for EI benefits, it meant he didn't have the required hours to establish a claim.

[16] The Applicant asked for his claim to be antedated. If permitted, it would have given him enough hours to establish a benefit period. The Applicant hasn't disputed that he applied late. The Commission hasn't disputed that if the claim were antedated the Applicant would have enough hours. The Applicant's main argument is that he acted reasonably for a person with his knowledge base.[7]

[17] The General Division is given some freedom when it makes findings of fact. When I look at whether I can intervene (step in), there has to be an important error that the General Division **based** its decision on. So, if the finding is "willfully going contrary to the evidence," or if crucial evidence were ignored, then I could intervene.[8]

[18] The Applicant's position has remained the same. He says he didn't have experience when it came to applying for EI benefits.[9] The Applicant explained at length

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[6] See section 58(1)(c) of the DESD Act.
[7] See AD1-3 the Applicant's Notice of Appeal to the Appeal Division.
[8] See *Walls v Canada (Attorney General)*, 2022 FCA 47 at paragraph 41.
[9] Listen to the General Division hearing recording at 00:07:04. See also GD3-23 and GD3-25 his explanation to the Commission about why he applied late.

during his hearing that he believed he behaved reasonably.[10] He argued someone with his experience wouldn't have looked into employment insurance.

[19] The General Division considered the Applicant's arguments.[11] The General Division reflects what the Applicant testified to at the hearing and his arguments. So, the General Division didn't ignore, misunderstand, or overlook the evidence. There is no important error of fact that the Applicant has identified.

– **The General Division didn't make an error of law**

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

[21] The Applicant argued at the hearing why he believed how he acted was reasonable. But this legal test is an objective one. That means the legal test isn't applied based on an individual's perspective. An objective test looks to assess what a reasonable person would have done in the same circumstances.

[22] The General Division decided the Applicant's conduct wasn't reasonable in the circumstances. It said the Applicant should have taken steps to find out if he was eligible for benefits. It said the Applicant waited almost a year. It said that ignorance of the law, even if in good faith, doesn't constitute good cause when it comes to delay in applying for EI benefits.[14]

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[10] Listen to the General Division hearing recording at 00:10:47 to 00:14:50.
[11] See the General Division decision at paragraphs 31 to 33; 40 to 41 and 45 to 46.
[12] The General Division reflected this correctly during the hearing and in its decision. Listen to the General Division hearing recording at 00:06:08. See the General Division decision at paragraphs 34 to 39.
[13] 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] See the General Division decision at paragraphs 48 to 52.

[23] The General Division grappled with the evidence. It made findings of fact that were consistent with the evidence it had before it. The General Division correctly identified the law and applied the law to the facts of the case.

[24] The Applicant's position doesn't appear to have changed. The Appeal Division doesn't just review the same arguments presented to the General Division. Unless there is an error, I can't just reweigh the evidence that was before the General Division.[15] So, even if I would have decided the case differently, I can't make changes to the decision unless there is an error identified.

[25] The Applicant is arguing that he acted as a reasonable person would have in his circumstances. But this is the same argument he told the General Division. The Applicant is taking issue with how the General Division applied the law to the facts of the case.

[26] Even if the Applicant disagrees with how the General Division characterized the evidence, the General Division didn't ignore, overlook, or misinterpret the evidence. The General Division's findings weren't made in a perverse and capricious manner. The General Division applied the correct legal test. This means there isn't an error that allows me to intervene.[16]

No other reviewable errors

[27] I haven't found any reviewable error that the General Division may have made.[17]

Conclusion

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

Elizabeth Usprich
Member, Appeal Division

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[15] See *Uvaliyev v Canada (Attorney General)*, 2021 FCA 222 at paragraph 7; and *Sibbald v Canada (Attorney General)* 2022 FCA 157 at paragraph 27.
[16] See *Page v Canada (Attorney General)*, 2023 FCA 169 at paragraph 77.
[17] 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.