



Citation: *CS v Canada Employment Insurance Commission*, 2025 SST 146

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: C. S.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated February 10, 2025
(GE-25-85)

Tribunal member: Solange Losier

Decision date: February 19, 2025

File number: AD-25-107

Decision

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

Overview

[2] C. S. is the Claimant in this case. He applied for Employment Insurance regular benefits (EI benefits) and established a benefit period in December 2019. But he only ended up claiming and collecting EI benefits for a few weeks in July 2020.

[3] Around the same time, he was getting benefits from Canada Revenue Agency—Canada Emergency Response Benefits (CRA CERB), so he didn't claim EI benefits because he didn't want to "double-dip." However, he ended up finding out later from CRA that he wasn't entitled to get CERB benefits. Because of that, he called the Commission on August 19, 2024, to ask them to antedate his EI claims back to March 22, 2020.¹

[4] The Canada Employment Insurance Commission (Commission) decided that he didn't have good cause to antedate his claims to March 22, 2020.²

[5] The General Division dismissed the Claimant's appeal. It found that he hadn't shown good cause for the entire period of delay, so his claims couldn't be antedated to the earlier date.³

[6] The Claimant is now asking for permission to appeal.⁴ He argues that the General Division made an important error of fact because all of the information was not taken into account and he is being treated unfairly.⁵

[7] I am denying permission to appeal because it has no reasonable chance of success.

¹ See Claimant's antedate request at page GD3-14.

² See Commission's reconsideration decision at pages GD3-18 to GD3-19.

³ See General Division decision at pages AD1A-1 to AD1A-6.

⁴ See Application to the Appeal Division at pages AD1-1 to AD1-9.

⁵ See page AD1-5.

Issue

[8] Is there an arguable case that the General Division ignored relevant evidence when it decided the antedate issue?

Analysis

[9] An appeal can proceed only if the Appeal Division gives permission to appeal.⁶ I must be satisfied that the appeal has a reasonable chance of success.⁷ This means that there must be some arguable ground that the appeal might succeed.⁸

[10] 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”).

[11] The possible grounds of appeal to the Appeal Division are that the General Division did one of the following:⁹

- didn’t follow a fair process
- acted beyond its powers or refused to exercise those powers
- made an error in law
- based its decision on an important error of fact.

I am not giving the Claimant permission to appeal

[12] The Claimant argues that the General Division made an important error of fact because he says not all of the information was taken into account and he is being treated unfairly.¹⁰

⁶ See section 56(1) of the *Department of Employment and Social Development* (DESD Act).

⁷ See section 58(2) of the DESD Act.

⁸ See *Osaj v Canada (Attorney General)*, 2016 FC 115, at paragraph 12.

⁹ See section 58(1) of the DESD Act.

¹⁰ See page AD1-5.

[13] The Claimant hasn't really pointed out exactly what information was not taken into account by the General Division. Even so, I reviewed the file in detail, the General Division decision and listened to the audio recording of the General Division hearing.

[14] The General Division had to decide whether the Claimant had good cause for the entire period of delay in claiming EI benefits.

[15] The *Employment Insurance Act* (EI Act) allows a claimant to antedate a claim for benefits if the claimant can show good cause for the delay throughout the period of the delay.¹¹

[16] The Federal Court of Appeal says that a person has to show that they acted as a reasonable and prudent person would have done in similar circumstances throughout the entire period of delay.¹² Barring exceptional circumstances, a person has to show that they took reasonably prompt steps to understand their entitlement to benefits and obligations under the EI Act.¹³

[17] The General Division found that the Claimant made his first call to Service Canada on August 19, 2024.¹⁴ This is consistent with the evidence on file which shows that he asked the Commission to antedate his claim to March 22, 2020.¹⁵

[18] The General Division decided that the period of delay in this case ran from March 22, 2020, to August 19, 2024.¹⁶

[19] The General Division considered the Claimant's reasons for the delay, including that he was getting benefits from CERB benefits from CRA and didn't want to double-dip by getting EI benefits at the same time.¹⁷ Its decision also shows that it was aware that CRA told him in 2023 that he wasn't entitled to the CERB benefits he got. It

¹¹ Section 10(5) of the *Employment Insurance Act* (EI Act) deals with "other late claims" and says that a claimant has to show there was good cause for the delay throughout the entire period.

¹² See *Canada (Attorney General) v Burke*, 2012 FCA 129, at paragraph 5.

¹³ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336, at paragraph 11 and *Canada (Attorney General) v Kaler*, 2011 FCA 266, paragraph 4.

¹⁴ See paragraph 23 of the General Division decision.

¹⁵ See page GD3-14.

¹⁶ See paragraph 13 of the General Division decision.

¹⁷ See paragraphs 14 and 19 of the General Division decision.

noted that he asked the CRA for a “third review” in early 2024, and got an answer from them on May 9, 2024.¹⁸

[20] The General Division identified that he didn’t have good cause for the delay for the period from March 22, 2020, to July 19, 2020. It explained he received EI benefits for the weeks of July 19, 2020, and July 26, 2020. And it found that nothing prevented him from making claims for EI benefits from March 22, 2020.¹⁹

[21] However, it accepted that “in 2020” [during the Covid19 pandemic] there was some confusion about one’s eligibility for benefits and that sometimes it was difficult for people to get information due to high demand. It found these circumstances were exceptional, but noted that they only explain part of the Claimant’s delay, not all of it.²⁰

[22] The General Division ultimately decided that he didn’t have good cause for the **entire** period of delay because he didn’t take reasonably prompt steps to determine his entitlement to EI benefits after learning the outcome of the third review from CRA in May 2024.

[23] It found that a reasonable and prudent person would have contacted Service Canada about his entitlement sooner than he did. It explained that he could have contacted Service Canada in 2023, when he first learned that he was not eligible for the CERB benefits that CRA paid him.²¹ It concluded that there were no exceptional circumstances to explain the **entire** delay period.²²

[24] The General Division is the fact finder and it was free to weigh the evidence. So, I can’t intervene in the General Division’s conclusion where it applies settled law to the facts.²³ This means I can’t conduct a rehearing and reweigh the evidence in order to reach a different outcome for the Claimant.²⁴

¹⁸ See paragraph 23 of the General Division decision.

¹⁹ See paragraph 18 of the General Division decision.

²⁰ See paragraph 16 of the General Division decision.

²¹ See paragraph 24 of the General Division decision.

²² See paragraph 26 of the General Division decision.

²³ See *Garvey v Canada (Attorney General)*, 2018 FCA 118, at paragraph 10.

²⁴ See *Tracey v Canada (Attorney General)*, 2015 FC 1300, at paragraph 46 and *Cameron v Canada (Attorney General)*, 2018 FCA 100, at paragraph 6.

[25] I am satisfied that the General Division didn't misinterpret or fail to consider any relevant evidence.²⁵ Its key findings were consistent with the evidence in the record. It considered all of the information and reasons he presented, but found that he didn't have good cause (or exceptional circumstances) for the entire period of delay.

[26] The Appeal Division's mandate is limited to deciding whether the General Division might have made a reviewable error and not whether the result was unfair.²⁶

[27] Respectfully, I acknowledge that the Claimant might be dissatisfied with the General Division's decision and find it unfair, but a disagreement with the outcome isn't enough for me to intervene.

[28] There is no arguable case that the General Division based its decision on an important error of fact.²⁷ It didn't ignore any relevant evidence. Also, it stated the correct law and various case law in its decision.²⁸

Conclusion

[29] Permission to appeal is refused. This means that the Claimant's appeal will not proceed. It has no reasonable chance of success.

Solange Losier
Member, Appeal Division

²⁵ The Federal Court recommends doing such a review in *Karadeolian v Canada (Attorney General)*, 2016 FC 165, at paragraph 10.

²⁶ See section 58(1) of the DESD Act and *Marcia v Canada (Attorney General)*, 2016 FC 16, at paragraph 34.

²⁷ See section 58(1)(c) of the DESD Act.

²⁸ See paragraphs 10–13 and 20–21 of the General Division decision.