



Citation: *ZL v Canada Employment Insurance Commission*, 2025 SST 160

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

**Applicant:** Z. L.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated January 15, 2025  
(GE-24-4155)

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**Tribunal member:** Janet Lew

**Decision date:** February 24, 2025

**File number:** AD-25-109

## Decision

[1] Leave (permission) to appeal is refused. The appeal will not be going ahead.

## Overview

[2] The Applicant, Z. L. (Claimant), is seeking leave to appeal the General Division decision.

[3] The General Division found that the Claimant had not shown good cause for the delay from November 19, 2023, to July 27, 2024, in claiming Employment Insurance benefits. The General Division found that the Claimant had not given an explanation for his delay that the law accepts. Because of that, the General Division was unable to treat his claim as if he had made it earlier. So, the Claimant did not get benefits for the period of the delay.

[4] The Claimant argues that he had good cause for the delay. He argues that the General Division made important factual errors. He has new evidence to supplement his case. He also argues that Service Canada<sup>1</sup> did not give him the information that he was looking for. He argues that Service Canada failed to tell him when and how he should submit his online claims. He also argues that the online reporting service did not let him update his personal information.

[5] Before the Claimant can move ahead with the appeal, I have to decide whether the appeal has a reasonable chance of success.<sup>2</sup> In other words, there has to be an arguable case. If the appeal does not have a reasonable chance of success, this ends the matter.<sup>3</sup>

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<sup>1</sup> Service Canada is the program operated by Employment and Social Development Canada to serve as a single point of access for some of the Government of Canada's programs, such as the Employment Insurance program.

<sup>2</sup> See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

<sup>3</sup> Under section 58 2) of the *Department of Employment and Social Development (DESD) Act*, I am required to refuse permission if I am satisfied "that the appeal has no reasonable chance of success."

[6] I am not satisfied that the appeal has a reasonable chance of success. Therefore, I am not giving the Claimant permission to move ahead with the appeal.

## **Issue**

[7] Is there an arguable case that the General Division made any important factual errors?

## **Analysis**

### **I am not giving the Claimant permission to appeal**

[8] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success. A reasonable chance of success exists if the General Division may have made a jurisdictional, procedural, legal, or a certain type of factual error.<sup>4</sup>

[9] For these types of factual errors, the General Division had to have based its decision on an error that it made in a perverse or capricious manner, or without regard for the evidence before it.<sup>5</sup>

### **The Claimant does not have an arguable case that the General Division made any important factual errors**

[10] The Claimant does not have an arguable case that the General Division based its decision on a factual error that it made in a perverse or capricious manner or without regard for the material before it.

#### **- The Claimant wants to introduce new evidence**

[11] The Claimant wants to provide new evidence to supplement his case. He says that on March 11, 2024, he injured his left thumb. He had to seek medical attention. A month later, his thumb remained swollen. It got worse, so he went to the hospital for

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<sup>4</sup> See section 58(1) of the DESD Act.

<sup>5</sup> See section 58(1)(c) of the DESD Act.

treatment. The Claimant argues that because of the injury to his left thumb, he could not make a claim for Employment Insurance benefits.<sup>6</sup>

[12] The Appeal Division generally does not accept new evidence. As the Federal Court of Appeal has held:

[13] Under the rules set by Parliament, hearings before the Appeal Division are not redos based on updated evidence of the hearing before the General Division. They are instead reviews of General Division decisions based on the same evidence.<sup>7</sup>

[13] There are some exceptions to this general rule. New evidence can be considered when it provides general background information, shows procedural defects, or exceptionally, in cases where both parties agree that an important document should be considered. Those circumstances do not exist here.

[14] New evidence is not accepted to support or supplement a party's case, particularly when that party could have produced that evidence before. The Claimant has not given me any reason that would let me accept this new evidence.

[15] Besides, even if I were allowed to consider the Claimant's new evidence, it would not show that the Claimant had good cause for the delay **throughout the period** from November 19, 2023, to July 27, 2024. The Claimant's injury did not arise until March 11, 2024.

[16] The General Division determined that a reasonable and prudent person would have gone to a Service Canada Centre and spoken with an officer about his claim. While the Claimant had pain and swelling of his left thumb, and needed to seek out medical attention, those considerations alone were unlikely to have prevented the Claimant from making enquiries about his claim.

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<sup>6</sup> See Claimant's Application to the Appeal Division-Employment Insurance, at AD 1-3, and photographs documenting a visit to the hospital, at AD 1-14 and 1-15.

<sup>7</sup> See *Gittens v Canada (Attorney General)*, 2019 FCA 256 at para 13.

- **The Claimant says Service Canada did not give him adequate information**

[17] The Claimant argues that Service Canada did not give him adequate information. He acknowledges that he received a letter from Service Canada, but says that the letter did not tell him how and when he had to file reports. He suggests that if the General Division had considered this evidence, it would have accepted that he had good cause for the delay in filing his reports.

[18] From this, it seems that the Claimant is saying that the General Division either mischaracterized or overlooked this evidence altogether. The Claimant does not have an arguable case on this point. The General Division noted the Claimant's evidence that he had received a letter dated December 8, 2023, from the Respondent, the Canada Employment Insurance Commission (Commission).<sup>8</sup>

[19] The General Division emphasized that the Commission's letter read, "Because these amounts have already been applied against your benefits, **do not include them in your reports**"<sup>9</sup> (the General Division's emphasis). The General Division essentially found that the Commission was reminding the Claimant that he had to file reports.

[20] The Commission's letter did not inform the Claimant how and when he should file his reports. But it is clear from the General Division's decision that it determined that the Commission was not required to provide this information. Ultimately, the Claimant was responsible for finding out his obligations and what he had to do. As the Federal Court wrote in a case called *Karval*:<sup>10</sup>

It is undoubtedly the case that many government benefit programs will have complex features and strict eligibility requirements. **More information, clearer language and better explanations can almost always be proposed in hindsight.** Where a claimant is actually misled by relying on unofficial and incorrect information, certain legal recourse may be available under the doctrine of reasonable expectations. However, where a claimant like Ms. Karval is not misled but merely lacks the knowledge necessary to accurately answer unambiguous questions, no legal remedies are available. **Fundamentally it is**

<sup>8</sup> See General Division decision, at paras 19 and 22.

<sup>9</sup> See General Division decision, at para 19, referring to the Commission's letter of December 8, 2023, at GD 3-17.

<sup>10</sup> See *Karval v Canada (Attorney General)*, 2021 FC 395.

**the responsibility of a claimant to carefully read and attempt to understand their entitlement options and, if still in doubt, to ask the necessary questions**... These things are clearly stated on the application...<sup>11</sup>

(my emphasis)

[21] There is nothing misleading in the Commission's letter.

[22] Although the Claimant insists that the Commission should have provided more information in its letter, some of this information appeared on the application for Employment Insurance benefits. For instance, under the heading "What's next?" applicants were advised that, after that they applied for Employment Insurance benefits, they had to start completing biweekly reports using the Internet or telephone reporting service as soon as they received their access code in the mail.<sup>12</sup> In other words, there were other instances where the Commission (or Service Canada) virtually told the Claimant what he had to do.

[23] The Claimant did not receive an access code in 2023. He suggests that Service Canada failed to give him an access code in 2023. If it had sent him the access code in 2023, he likely would have filed his reports on time.

[24] However, the evidence shows that the Commission was blameless for not sending an access code to the Claimant's new address. The Claimant simply had not notified Service Canada or the Commission of his new address until several months after he had already moved. Yet, the application form for Employment Insurance benefits advised claimants on how to update their mailing address.<sup>13</sup>

[25] The Claimant states that he was misled because his online account was not updated and because he had been unable to reach anyone at Service Canada by telephone.<sup>14</sup> But he does not identify what was misleading. As it was, the Claimant's online account had not been "updated" because the Claimant had not filed any reports.

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<sup>11</sup> See *Karval* at para 14.

<sup>12</sup> See application for Employment Insurance benefits, at GD 3-13.

<sup>13</sup> See application for Employment Insurance benefits, at GD 3-14.

<sup>14</sup> See Claimant's undated letter "To whom it may concern," at GD 2-13 (and GD 3-54).

And the fact that the Claimant did not manage to speak with anyone does not mean that he received any misleading information. He just did not receive any information at all.

[26] I am not satisfied that there is an arguable case that the General Division mischaracterized or overlooked any evidence that showed the Commission or Service Canada had not given more information to the Claimant. The General Division noted that evidence. Apart from that, the law requires a claimant to find out what is required of them.

**- The Claimant says that Service Canada did not answer his questions**

[27] The Claimant argues that although he went to Service Canada's offices in person, no one answered his questions or gave him the information that he was looking for.

[28] I am not satisfied that there is an arguable case on this point, because the evidence shows that the Claimant had not gone to any Service Canada offices for help. The Claimant mentioned that he tried phoning Service Canada, but he does not say in any of his letter or phone calls with the Commission that he tried going to a Service Canada office.<sup>15</sup> In fact, the Commission's notes suggest that it asked the Claimant if he had gone into a Service Canada Centre for help, and that he responded, "no."<sup>16</sup>

[29] The evidence does not support the Claimant's arguments that he did not receive any help from a Service Canada office.

**- The Claimant says Service Canada's online process would not let him update his personal information**

[30] The Claimant argues that Service Canada's online process would not let him update his personal information. The Claimant suggests that the General Division failed

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<sup>15</sup> See Claimant's undated letter "To whom it may concern," at GD 2-13 (and GD 3-54). See also Supplementary Records of Claim dated September 18, 2024 (GD 3-51) and December 4, 2024, at GD 3-56.

<sup>16</sup> See Supplementary Record of Claim dated December 4, 2024, at GD 3-56.

to consider this evidence. He suggests that if it had considered this evidence, it would have determined that he had good cause for the delay.

[31] But the General Division did in fact consider this evidence. The General Division acknowledged the Claimant's testimony that he tried to update his online account, My Service Canada Account, but kept getting error messages.<sup>17</sup> But, as the General Division determined, the Claimant had not acted as a reasonable and prudent person. It found that a reasonable and prudent person would have spoken to a Service Canada officer—either by telephone or at a Service Canada Centre—to enquire about the lack of benefits.

[32] Essentially, the Claimant is asking me to reassess the evidence and to decide the case in his favour. He is asking the Appeal Division to agree with him that he had good cause for his delay in filing reports.

[33] However, the Appeal Division does not reassess the evidence that was before the General Division in order to reach a different conclusion. The role of the Appeal Division in an application for leave to appeal is limited to determining whether the appeal has a reasonable chance of success.

## **Conclusion**

[34] The appeal does not have a reasonable chance of success. Therefore, permission to appeal is refused. This means that the appeal will not be going ahead.

Janet Lew  
Member, Appeal Division

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<sup>17</sup> See General Division decision, at para 21.