



Citation: *TM v Canada Employment Insurance Commission*, 2025 SST 352

Social Security Tribunal of Canada Appeal Division

Extension of Time and Leave to Appeal Decision

Applicant: T. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated February 7, 2025
(GE-25-177)

Tribunal member: Glenn Betteridge

Decision date: April 9, 2025

File number: AD-25-247

Decision

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

Overview

[2] T. M. is the Claimant. She wants permission to appeal a General Division decision. I can give her permission if her appeal has a reasonable chance of success.

[3] When she applied for Employment Insurance (EI) benefits on August 20, 2024, she asked the Commission to antedate (backdate) her claim to January 7, 2024.¹

[4] The General Division dismissed her appeal. It agreed with the Commission's refusal to antedate her claim. The General Division decided she didn't show good cause for her delay applying. That's because she didn't act like a reasonable and prudent person. And there were no exceptional circumstances in her case.

[5] The Claimant disagrees. She says the General Division made a legal error. She should get an antedate because she proved she sought legal advice, and she received benefits after she applied in August 2024.

[6] Unfortunately, the Claimant's appeal doesn't have a reasonable chance of success. This means I can't give her permission to appeal.

The Claimant filed her application to appeal on time

[7] I had to decide whether the Claimant filed her appeal on time. That's because it wasn't clear when the Tribunal communicated the General Division decision to the Claimant.

¹ Section 10(4) of the *Employment Insurance Act* lets the Commission antedate an initial claim.

[8] A person has to file their application to appeal no more than 30 days after the Tribunal communicates the General Division decision to them.² If they file their application after 30 days, it's late.

[9] The Tribunal's file shows

- The Tribunal emailed the General Division decision to the Claimant on February 17, 2025.
- She called the Tribunal on March 3, 2025 to get an update. She hadn't received the decision. So the tribunal emailed her a copy that day.
- Later in March, she called to say she didn't agree with parts of the decision and wanted to appeal.

[10] I accept this evidence. The tribunal's registry staff enter notes into the electronic file management system as they do tasks. I have no reason to doubt this evidence.

[11] The Tribunal's rules say I can assume a person received an email from the Tribunal the next business day.³ Based on this rule and the evidence I accepted, I find the tribunal communicated the General Division decision to the Claimant on **March 4, 2025**.

[12] This means she had to file her application to appeal by **April 3, 2025**. The Tribunal date stamp says it received her application on **April 3, 2025**. I have no reason to doubt that. So, I find the Claimant filed her application on time.

Issue

[13] Does the Claimant's appeal have a reasonable chance of success?

² This is what section 57(1)(a) of the *Department of Employment and Social Development Act* (DESD Act) says.

³ See section 22(3) of the *Social Security Tribunal Rules of Procedure*.

I am not giving the Claimant permission to appeal

[14] I read the Claimant's application to appeal.⁴ I read the General Division decision. I reviewed the documents in the General Division file.⁵ Then I made my decision.

[15] For the reasons that follow, I am not giving the Claimant permission to appeal.

The permission to appeal test screens out appeals that don't have a reasonable chance of success⁶

[16] I can give the Claimant permission to appeal if her appeal has a reasonable chance of success.⁷ This means she has to show an **arguable ground of appeal** upon which her appeal **might succeed**.⁸

[17] I can consider four grounds of appeal, which I call **errors**.⁹ The General Division

- used an unfair process or wasn't impartial (a procedural fairness error)
- didn't use its decision-making power properly (a jurisdictional error)
- made a legal error
- made an important factual error

[18] The Claimant's reasons for appeal set out the key issues and central arguments I have to consider.¹⁰ Because the Claimant is representing herself, I will also look beyond her arguments when I apply the permission to appeal test.¹¹

⁴ See AD1 and AD1B.

⁵ See GD2, GD3, GD4, and GD5.

⁶ See *Paradis v Canada (Attorney General)*, 2016 FC 1282 at paragraph 32.

⁷ See section 58(2) of the *Department of Employment and Social Development Act* (DESD Act).

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

⁹ See section 58(1) of the DESD Act.

¹⁰ See *Hazaparu v Canada (Attorney General)*, 2024 FC 928 at paragraph 13.

¹¹ The Federal Court has said the Appeal Division should not apply the leave to appeal test mechanistically and should review the General Division record. See for example *Griffin v Canada (Attorney General)*, 2016 FC 874; *Karadeolian v Canada (Attorney General)*, 2016 FC 615; and *Joseph v Canada (Attorney General)*, 2017 FC 391.

[19] The Claimant says the General Division made a legal error.¹² I will consider that argument in the next section.

[20] Before I do, I will address other things she wrote in her application.¹³ Her other reasons show me she disagrees with the General Division decision or its application of the law to the facts in her case (paragraphs 29 and 30). She also restates some of her evidence and reargues points from her General Division appeal.

[21] These reasons don't show an arguable case the General Division made an error.

[22] The Appeal Division isn't a do-over of her General Division appeal. I can't interfere with the General Division's assessment of the evidence unless she shows it based its decision on some evidence it ignored or misunderstood. Her reasons don't show that.

[23] I reviewed the documents in the General Division file. The General Division didn't ignore or misunderstand relevant evidence. And its decision is supported by the relevant evidence. This tells me the General Division didn't make an important factual error.

There isn't an arguable case the General Division made a legal error

[24] The Claimant says:

The General Division made an error of law. Although I was granted part of the claim, the General Division's decision outlines two reasons an antedate can be granted: a) I have provided proof that I sought legal advice. b) I have already received partial EI payments.

[25] The General Division makes a legal error when it ignores an argument it has to consider, doesn't give adequate reasons for its decision, misinterprets a law, uses an incorrect legal test, or doesn't follow a court decision it has to follow.

¹² She checked the error of law box on her application, at AD1-4.

¹³ See AD1-9.

[26] The legal test to get an antedate of an initial claim is a settled legal test. The application of settled legal test to the evidence in a case is a question of mixed fact and law. It isn't a legal error.¹⁴

[27] For the reasons that follow, I can't accept the Claimant's argument.

[28] The Claimant's argument seems to misunderstand the law the General Division had to apply. Or she might be rearguing her case, saying she meets the legal test. Or she might be arguing the General Division made a mixed error when it applied the law to the facts in her appeal.

– **The Claimant hasn't shown the General Division made a legal error, and I didn't find an arguable case**

[29] To get an antedate, a person has to prove they meet the legal test from section 10(4) of the *Employment Insurance Act* (EI Act), as it has been interpreted by the courts. There are two parts to the test. First the Claimant had to show good cause. If she was able to show good cause, second she had to show she qualified to receive benefits on the earlier date.

[30] The General Division correctly stated the legal test—from the EI Act and leading court decisions—it had to use to decide the appeal (paragraphs 8, 10 to 13, and 28). Then it applied the "good cause" test to **all the relevant circumstances** to make its findings (paragraphs 29 to 31).

[31] To get an antedate, she had to meet **both parts of the test**. The General Division decided she didn't meet the first part, so it didn't have to consider the second part (paragraphs 8, 9, and 32). This isn't a legal error.

[32] The law doesn't say because she got benefits under her August 2024 application, she would have qualified for benefits as of January 2024. If the General Division concluded she had good cause, then she would have had to show she qualified

¹⁴ See *Quadir v Canada (Attorney General)*, 2018 FCA 21 at paragraph 9.

for benefits based on the earlier date. The fact she got to benefits under her August 2024 application is a separate legal issue, and is not part of the antedating test.

[33] The fact the Claimant sought legal advice doesn't decide her case. It's just one circumstance that was relevant to the legal test. So the General Division had to consider this, and it did (paragraphs 22 and 30).

[34] The legal test tells the General Division to consider whether she had good cause **throughout her delay applying**. In other words, the General Division had to consider what she did or didn't do from January through August 2024.

[35] That's what it did. And the General Division decided that a reasonable person in her circumstances would have done more than get legal advice about being dismissed from her job. A reasonable person would have gathered the information she needed to apply for EI, followed up on the initial legal advice she got, reviewed her ROE, reviewed the EI website, or contacted an EI agent (paragraphs 29 and 30).

[36] But she didn't do those things during the delay. And she didn't show exceptional circumstances (paragraph 31). So she didn't show good cause and could not get her claim antedated (paragraphs 32 and 33).

[37] The General Division's reasons are more than adequate.¹⁵ It grappled with the right questions. It considered the parties' evidence and arguments. And its reasons add up.

[38] To summarize this section, the Claimant hasn't shown an arguable case the General Division made a legal error. And I didn't find an arguable case when I reviewed the General Division decision and the law it had to use.

¹⁵ See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211; and *Sennikova v Canada (Attorney General)*, 2021 FC 982 at paragraphs 62 and 63.

Conclusion

[39] The Claimant hasn't shown an arguable case the General Division made an error that might change the outcome in her appeal. And I didn't find an arguable case.

[40] This tells me her appeal doesn't have a reasonable chance of success. So I can't give her permission to appeal the General Division decision.

Glenn Betteridge
Member, Appeal Division