



Citation: *RM v Canada Employment Insurance Commission*, 2025 SST 443

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: R. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated March 24, 2025
(GE-25-299)

Tribunal member: Stephen Bergen

Decision date: **April 29, 2025**

File number: AD-25-227

Decision

[1] I am refusing leave (permission) to appeal. The appeal will not proceed.

Overview

[2] R. M. is the Applicant. I will call him the Claimant because this application is about his claim for Employment Insurance (EI) benefits. The Respondent is the Canada Employment Insurance Commission, which I will call the Commission.

[3] The Claimant applied for EI benefits on November 17, 2023, and asked that his application be treated as though it were made on April 30, 2017. This kind of request is called an antedate. The Commission refused to antedate his claim because it did not accept that he had good cause for the delay for the entire period of the delay.

[4] The claimant asked the Commission to reconsider, but it would not change its decision. He appealed to the General Division, which dismissed his appeal. Now he is asking the Appeal Division for permission to appeal.

[5] I am refusing permission to appeal. The Claimant has not made an arguable case that the General Division made an error of procedural fairness.

Issue

[6] Is there an arguable case that the General Division made an error of procedural fairness?

I am not giving the Claimant permission to appeal

General legal principles for leave to appeal applications

[7] For the Claimant's application for leave to appeal to succeed, his reasons for appealing would have to fit within the "grounds of appeal." To grant this application for leave and permit the appeal process to move forward, I must find that there is a reasonable chance of success on one or more grounds of appeal.

[8] The grounds of appeal identify the kinds of errors that I can consider. I may consider only the following errors:

- a) The General Division hearing process was not fair in some way.
- b) The General Division did not decide an issue that it should have decided. Or, it decided something it did not have the power to decide (error of jurisdiction).
- c) The General Division based its decision on an important error of fact.
- d) The General Division made an error of law when making its decision.¹

[9] The courts have equated a reasonable chance of success to an “arguable case.”²

Procedural Fairness

[10] There is no arguable case that the General Division acted in a way that was procedurally unfair.

[11] Parties before the General Division have a right to certain procedural protections such as the right to be heard and to know the case against them, and the right to an unbiased decision-maker. This is what is known as “procedural fairness.”

[12] The Claimant did not say that he did not have a fair chance to present his case at his hearing, or to respond to the Commission’s case. He has not complained that the General Division member was biased or that he had already prejudged the matter.

[13] When I read the decision and review the appeal record, I do not see that the General Division did anything, or failed to do anything, that causes me to question the fairness of the process.

[14] I recognize that the Claimant disagrees with the General Division’s findings and with its decision, so he may feel the decision result treats him unfairly. But procedural

¹ This is a plain-language version of the grounds of appeal. The full text is in section 58(1) of the DESDA.

² See *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; and *Ingram v Canada (Attorney General)*, 2017 FC 259.

fairness is concerned with the fairness of the process. It is not concerned with whether a party feels that the decision result is fair.

Important error of fact

[15] There is no arguable case that the General Division made an important error of fact.

[16] The Claimant maintains that he had good cause for the delay because he had been receiving CPP and OAS benefits and did not know he could also collect EI benefits.

[17] The Claimant did not point to any evidence that the General Division ignored or misunderstood, but I appreciate that he is unrepresented. He may not have understood precisely what he should argue.

[18] I searched the record for evidence that was arguably overlooked or misunderstood, and which could have been relevant to whether the Claimant had good cause for the delay.³ Unfortunately, I have not found anything in the record that could support an argument that the General Division made an error of fact.

[19] The General Division did not ignore or misunderstand evidence that the Claimant was receiving CPP and OAS, or that he took so long to apply for EI benefits because he did not know he could be eligible. It understood the Claimant's explanation, but it found that his ignorance of his rights and obligations under the *Employment Insurance Act* were not good cause for his delay. This is consistent with what the Federal Court of Appeal has said about ignorance of the law.⁴

[20] The Claimant's appeal has no reasonable chance of success.

³ I am following the lead of the Federal Court in decisions such as *Karadeolian v. Canada (Attorney General)*, 2016 FC 615.

⁴ See for example, *Canada (Attorney General) v Kaler*, 2011 FCA 266; *Canada (Attorney General) v Somwaru*, 2010 FCA 336; *Canada v. Carry*, 2005 FCA 367.

Conclusion

[21] I am refusing permission to appeal. This means that the appeal will not proceed.

Stephen Bergen
Member, Appeal Division