

Federal Court



Cour fédérale

Date: 20250425

Docket: T-2719-23

Citation: 2025 FC 743

Ottawa, Ontario, April 25, 2025

PRESENT: The Honourable Madam Justice Turley

BETWEEN:

JOHN CONTOIS

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant lost his job in March 2020 due to the Covid-19 pandemic. He applied for and received the Canada Emergency Response Benefit [CERB] and, later, the Canada Recovery Benefit [CRB] until December 2020. This judicial review application arises out of the Applicant's April 2022 request to antedate his application for employment insurance [EI] benefits to March

2020, in accordance with subsection 10(4) of the *Employment Insurance Act*, SC 1996, c 23 [EI Act].

[2] The Applicant's accountant advised that, due to an inheritance from his father's estate, he would receive more favourable tax treatment if he had received EI benefits rather than the CERB and the CRB during the 2020 taxation year. This is because the clawback threshold was lower for the CERB and the CRB.

[3] The Canada Employment Insurance Commission [Commission] denied the Applicant's request to antedate his application for EI benefits both initially and on reconsideration, finding that he had not shown good cause for delaying his application. The General Division of the Social Security Tribunal [General Division] refused the Applicant's appeal. However, that decision was later overturned by the Social Security Tribunal Appeal Division [Appeal Division] due to an error of law unrelated to the matters currently under review.

[4] On redetermination, the General Division again dismissed the Applicant's appeal. It accepted the Applicant's arguments regarding the impact of his ADHD on the application process but determined that the Applicant's unawareness of the inheritance's effect on his requirement to repay the CRB was dispositive. The General Division found that this did not constitute good cause under subsection 10(4) of the *EI Act*.

[5] The Appeal Division refused leave to appeal because an appeal had “no reasonable chance of success” pursuant to subsection 58(2) of the *Department of Employment and Social Development Act*, SC 2005, c 34 [DESDA]. This is the decision under review.

[6] Having carefully reviewed the matter and considered the parties’ submissions, I find that there is no legal basis for me to interfere with the Appeal Division’s decision. I must therefore dismiss the application for judicial review.

II. Analysis

A. *The Applicant cannot raise new issues on judicial review*

[7] Generally, arguments made for the first time on judicial review will not be entertained if the issue could have been raised before the administrative decision-maker: *Alberta (Information and Privacy Commissioner) v Alberta Teachers’ Association*, 2011 SCC 61 at paras 22–23; *Terra Reproductions Inc v Canada (Attorney General)*, 2023 FCA 214 at paras 6–7; *Firsov v Canada (Attorney General)*, 2022 FCA 191 at para 49; *Gordillo v Canada (Attorney General)*, 2022 FCA 23 at para 99.

[8] The Respondent argues that the Applicant raises multiple issues on judicial review that he did not put before the Appeal Division: Respondent’s Memorandum of Fact and Law at paras 30–33. In his leave to appeal application, the Applicant argued that the General Division made three errors: (i) it misunderstood the implications of his ADHD disability; (ii) it should have accepted that he had good cause for delay because he was enrolled in a program that replaced EI; and (iii) it

did not address all of the issues identified in the first Appeal Division decision: Social Security Tribunal of Canada, Appeal Division, Leave to Appeal Decision, December 5, 2023 at para 21 [Appeal Division Decision].

[9] Before this Court, however, the Applicant argues that the Appeal Division failed to properly consider and address whether the General Division erred in: (i) imposing too high a standard for the reasonable and prudent person; (ii) failing to find that the Applicant was given inaccurate/incomplete information by the Canada Revenue Agency [CRA]; (iii) failing to evaluate the impact of the Applicant's status as a new citizen, his age, his poor computer skills, and the pandemic itself, in its analysis of exceptional circumstances; and (iv) ignoring the Applicant's efforts to learn about his rights and obligations: Applicant's Memorandum of Fact and Law at paras 8, 9, 10, 13, 16, 17, 19. The Appeal Division cannot be faulted for failing to address issues that were never raised before it. As a result, I have not considered these arguments.

B. *The Appeal Division's decision is reasonable*

[10] There is no dispute that the applicable standard of review is reasonableness: *Cecchetto v Canada (Attorney General)*, 2024 FCA 102 at para 4 [*Cecchetto*]; *Kuk v Canada (Attorney General)*, 2024 FCA 74 at para 5; *Bhamra v Canada (Attorney General)*, 2023 FCA 121 at para 3; *Uvaliyev v Canada (Attorney General)*, 2021 FCA 222 at para 7.

[11] A reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker": *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85

[Vavilov]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8 [*Mason*]. A decision should only be set aside if there are “sufficiently serious shortcomings” such that it does not exhibit the requisite attributes of “justification, intelligibility and transparency”: *Vavilov* at para 100; *Mason* at paras 59–61.

[12] The Applicant has failed to demonstrate that the Appeal Division erred in refusing leave to appeal. It can only grant leave if the proposed appeal has a reasonable chance of success on at least one of the grounds listed in subsection 58(1) of the *DESDA*: *Cecchetto* at para 5. These grounds are: (a) the failure to observe a principle of natural justice or otherwise acting beyond or refusing to exercise its jurisdiction; (b) an error of law; or (c) an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it.

[13] A “reasonable chance of success” has been interpreted as “having some arguable ground upon which the proposed appeal might succeed”: *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12; see also: *Gloglo v Canada (Attorney General)*, 2024 FC 1923 at para 35; *Dubeau v Canada (Attorney General)*, 2019 FC 725 at para 28.

[14] Here, the Appeal Division determined that the General Division made no such errors in finding that the Applicant did not establish good cause for his delayed EI application. Under subsection 10(4) of the *EI Act*, the Commission can treat an initial claim for EI benefits as having been made on an earlier day if the claimant qualified for benefits on that earlier day and there was good cause for the delay throughout the entire period.

[15] “Good cause” is determined by reference to what a reasonable and prudent person would have done in similar circumstances. Such a person is expected to take reasonably prompt steps to inquire about their rights and obligations. In addition, this behaviour must be evidenced throughout the entire period of delay. Ignorance of the law, even if coupled with good faith, is not sufficient: *Canada (Attorney General) v Mendoza*, 2021 FCA 36 at paras 13–14; *Canada (Attorney General) v Burke*, 2012 FCA 139 at para 5; *Canada (Attorney General) v Kaler*, 2011 FCA 266 at para 4; *Canada (Attorney General) v Somwaru*, 2010 FCA 336 at paras 6–10.

[16] The Applicant argues that the Appeal Division improperly dismissed the effect his ADHD had on his ability to navigate these applications. He submits that the General Division made inaccurate conjectures about the nature of ADHD. In his view, this makes their analysis of good cause unreasonable.

[17] In my view, the Appeal Division reasonably found that the General Division acknowledged and accepted the Applicant’s evidence about his ADHD but “did not accept that he had good cause for delay, despite his condition”: Appeal Division Decision at para 28. I agree with the Respondent that the Applicant is asking this Court to reassess and reweigh the evidence, which is not its role on judicial review: *Vavilov* at para 125.

[18] The determinative issue is that the only reason for the Applicant’s antedate request — to receive more favourable tax treatment — does not constitute good cause within the meaning of the *EI Act*. It was only after his accountant explained that he would have to repay some or all of the CRB that the Applicant contacted Service Canada to request EI benefits instead.

[19] The General Division concluded that unawareness of the tax implications of an inheritance does not constitute good cause:

[72] The Commission says that the Appellant failed to take prompt steps to understand his rights and obligations under the law as he took no steps to contact EI until after his accountant told him he should have applied for EI.

[73] I can accept the Appellant was ignorant of any implications his father's estate may have on his requirement to repay benefits until his accountant told him about the difference in the income clawback threshold. However, ignorance does not provide good cause, since it came about because the Appellant made no effort to understand what impact, if any, his inheritance could have on his benefits.

[74] I find, in September 2020, when the Appellant applied for the CRB, he was aware that his father had passed away and that he would be receiving an inheritance as he says he received inheritance money in January 2020. Also, he says his sister was keeping him up to date on how the estate was being handled.

[...]

[79] His claim he was ignorant of the different income clawback thresholds between the CRA benefits program and the EI benefit program and how that impact *[sic]* him does not provide good cause, because the ignorance was self induced as he failed to bother to investigate the EI program.

Social Security Tribunal of Canada, General Division – Employment Insurance Section Decision, August 17, 2023 [General Division Decision]

[Citations omitted]

[20] Furthermore, the Applicant acknowledges that he never shared information about his inheritance with the CRA during his applications for benefits. As the General Division found, the CRA could not provide information on something about which they were not informed: General Division Decision at para 83.

[21] Finally, the Applicant reiterates that the CRB replaced EI and thus an application for one was, in practice, an application for the other. I agree with the Respondent, as well as the General and Appeal Divisions, who both addressed this argument, that this is not correct. The CRB and EI are two different programs under two different statutes. They have more differences than divergent clawback thresholds. Furthermore, the programs ran concurrently; one did not replace the other. The Appeal Division reasonably found that the General Division's determinations on this point were sound: Appeal Division Decision at paras 29–31.

III. Conclusion

[22] Based on the foregoing, I am unable to find any reviewable errors in the Appeal Division's decision to refuse leave to appeal. As a result, this application for judicial review is dismissed.

[23] The Respondent did not seek costs and I agree that, in the circumstances, none should be payable by the Applicant.

JUDGMENT in T-2719-23

THIS COURT’S JUDGMENT is that the application for judicial review is dismissed
without costs.

“Anne M. Turley”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2719-23

STYLE OF CAUSE: JOHN CONTOIS v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: CALGARY, ALBERTA

DATE OF HEARING: MARCH 6, 2025

JUDGMENT AND REASONS: TURLEY J.

DATED: APRIL 25, 2025

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ON HIS OWN BEHALF

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