Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *J. A. v Canada Employment Insurance Commission*, 2018 SST 1280

Tribunal File Number: AD-18-733

BETWEEN:

**J. A.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

# SOCIAL SECURITY TRIBUNAL DECISION
## Appeal Division

Leave to Appeal Decision by: Jude Samson

Date of Decision: December 10, 2018

Canada

## DECISION AND REASONS

### DECISION

[1] The application requesting leave to appeal is refused.

### OVERVIEW

[2] The Applicant, J. A. (Claimant), applied for parental benefits under the terms of the *Employment Insurance Act* (EI Act) in September 2017, while he was taking care of his second child. The Respondent, the Canada Employment Insurance Commission (Commission), approved his application, and benefits were paid until February 2018, when his child turned one year old. Based on information that he had received from the Commission, the Claimant did not expect his benefits to end at that time, and so was advised to apply for regular Employment Insurance (EI) benefits, which he did. Nevertheless, the Commission denied his application for EI benefits because his childcare responsibilities meant that his availability for work was unduly limited.

[3] The Claimant appealed the Commission's decision to the Tribunal's General Division. On appeal, the Claimant argued that he could have returned to work earlier and that he suffered financially because of misinformation that he received from the Commission and because of the Commission's delay in making a decision concerning his application for EI benefits. The General Division dismissed the appeal, concluding (in part) that the Commission's misinformation and delay were irrelevant to its decision.

[4] The Claimant is now seeking to appeal the General Division decision to the Tribunal's Appeal Division, but he requires leave (or permission) for the file to move forward. The Claimant seems to accept that the EI Act was applied correctly to his application for benefits. Instead, he is arguing that the General Division committed an error by failing to recognize how the Commission's delay and misinformation contributed to his financial loss.

[5] Unfortunately for the Claimant, I have concluded that his appeal has no reasonable chance of success and that leave to appeal must therefore be refused.

## ISSUES

[6] In reaching this decision, I focused on the following questions:

a) Is there an arguable case that the General Division committed an error relating to its jurisdiction by failing to recognize how the Commission's misinformation and delay contributed to the Claimant's financial loss?

b) Did the General Division arguably overlook or misconstrue relevant evidence?

## ANALYSIS

### The Appeal Division's Legal Framework

[7] The Tribunal has two divisions that operate quite differently from one another. At the Appeal Division, the focus is on whether the General Division might have committed one or more of the three errors (or grounds of appeal) set out in section 58(1) of the *Department of Employment and Social Development Act* (DESD Act). Generally speaking, these errors concern whether the General Division:

a) breached a principle of natural justice or made an error relating to its jurisdiction;

b) rendered a decision that contains an error of law; or

c) based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[8] There are also procedural differences between the Tribunal's two divisions. Most cases before the Appeal Division follow a two-step process: the leave to appeal stage and the merits stage. This appeal is at the leave to appeal stage, meaning that permission must be granted for it to move forward. This is a preliminary hurdle aimed at filtering out cases that have no reasonable chance of success.[1] The legal test that applicants need to meet at this stage is a low one: Is there

[1] DESD Act, s 58(2).

any arguable ground on which the appeal might succeed?[2] Applicants must show that this legal test has been met.[3]

**Issue 1: Is there an arguable case that the General Division committed an error relating to its jurisdiction?**

[9] In my view, it is clear that the General Division did not commit an error relating to its jurisdiction.

[10] The Commission seems to admit that it provided incorrect information to the Claimant.[4] There also seems to be little doubt that the Claimant relied on this information to his detriment and that the problem grew worse because of the time that it took the Commission to make a decision on his application for regular EI benefits.

[11] The Claimant now argues that the General Division should have considered these factors when reaching its decision, though I am not entirely sure what he means be this. Is he saying that the Commission should compensate him for his loss, or is he saying that the EI Act's eligibility requirements should be applied flexibly because of his circumstances? The General Division considered both scenarios and concluded in paragraph 6 of its decision that it could not grant the Claimant's request:

> Misinformation from the Commission does not provide relief from the application of employment insurance legislation (*Canada (Attorney General) v. Shaw*, 2002 FCA 325). When considering employment insurance matters, I am bound by the law, and I cannot refuse to apply it, even if it would result in a more equitable outcome (*Granger v. Employment and Immigration Commission*, A-684-85). Furthermore, I do not have the jurisdiction to consider whether the Commission bears any liability for providing inaccurate information to the Appellant (*Canada (Attorney General) v. Romero*, A-815-96).

[12] In response, the Claimant relies on the mandate letter that was issued to the Tribunal's Chairperson by the Minister of Families, Children and Social Development.[5] In the letter, the

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[2] *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12; *Ingram v Canada (Attorney General)*, 2017 FC 259 at para 16.
[3] *Tracey v Canada (Attorney General)*, 2015 FC 1300 at para 31.
[4] GD4-1.
[5] Online: Social Security Tribunal <https://www1.canada.ca/en/sst/mandate.html>.

Chairperson is tasked with setting "service standards and effective performance measures aligned with the different nature of the benefits programs of the Department and [committing] the Tribunal to the continuous improvement of its overall efficiency and effectiveness."

[13] In my view, the Claimant's argument has no reasonable chance of success. On the one hand, paragraph 6 of the General Division decision provides a full response to the Claimant's arguments and is well supported by binding legal authorities. The Claimant, on the other hand, relies on a mandate letter that is not legally binding and that pertains to the timeliness of the Tribunal's decisions rather than to those of the Commission. If the Claimant wants to be compensated for the misinformation that he received and for the Commission's poor service, then his remedy lies elsewhere.[6]

[14] As mentioned above, the Appeal Division's role is limited to determining if the General Division committed any of the three errors set out in section 58(1) of the DESD Act. In this case, I do not see the Claimant's argument as amounting to an arguable case that the General Division committed an error relating to its jurisdiction. As a result, I have no power to intervene.

**Issue 2: Did the General Division arguably overlook or misconstrue relevant evidence?**

[15] Regardless of the conclusion above, I am mindful of Federal Court decisions in which the Appeal Division has been instructed to go beyond the four corners of the written materials and consider whether the General Division might have misconstrued or failed to properly account for any of the evidence.[7] If this is the case, then leave to appeal should normally be granted regardless of any technical problems that might be found in the request for leave to appeal.

[16] After reviewing the documentary record, listening to the audio recording of the General Division hearing, and examining the decision under appeal, I am satisfied that the General Division neither overlooked nor misconstrued relevant evidence. The question within the General Division's jurisdiction was the Claimant's entitlement to benefits under the EI Act.

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[6] *Granger v Canada Employment and Immigration Commission*, 1986 CanLII 3962 at paras 34 and 35 (FCA), aff'd [1989] 1 SCR 141.
[7] *Griffin v Canada (Attorney General)*, 2016 FC 874 at para 20; *Karadeolian v Canada (Attorney General)*, 2016 FC 615 at para 10.

Indeed, even the Claimant appears to accept that the provisions of the EI Act were properly applied in his case.[8]

[17] Rather, the Claimant argues that the General Division overlooked the loss that he suffered because of the Commission's provision of inaccurate information and subsequent delay in making a decision. For the reasons that the General Division described, however, those factors were not ones that it could consider when reaching its decision.

**CONCLUSION**

[18] While I have great sympathy for the Claimant's position, I have concluded that his appeal has no reasonable chance of success. As a result, I must refuse his application for leave to appeal.

Jude Samson
Member, Appeal Division

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| REPRESENTATIVE: | J. A., self-represented |

[8] AD1-3.