



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. J. v Canada Employment Insurance Commission*, 2019 SST 13

Tribunal File Number: AD-18-678

BETWEEN:

J. J.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Stephen Bergen

DATE OF DECISION: January 10, 2019

DECISION AND REASONS

DECISION

[1] The appeal is allowed.

OVERVIEW

[2] The Appellant, J. J. (Claimant), left his employment on December 8, 2015. He later learned that he might be eligible for Employment Insurance benefits because he had left his employment to care for his ailing parents. He submitted an application for benefits to the Respondent, the Canada Employment Insurance Commission (Commission), on December 21, 2017. At the same time, he submitted an application to antedate his claim to December 8, 2015.

[3] The Commission rejected his claim on the basis that he did not have any hours of insurable employment in the qualifying period before his application. It also rejected his application to antedate his claim because it did not accept that the Claimant had good reason for delaying his application. The Claimant asked the Commission to reconsider its decision to refuse the antedate, but the Commission maintained its original decision.

[4] The Claimant next appealed to the General Division of the Social Security Tribunal. The Social Security Tribunal summarily dismissed his claim, and the Claimant is now appealing to the Appeal Division.

[5] The Claimant's appeal is allowed. The General Division failed to consider all the evidence of exceptional circumstances that was before it or the possibility of additional evidence when it found that the Claimant had no reasonable chance of success on appeal.

ISSUES

[6] Did the General Division find that there were no "exceptional circumstances"¹ without regard for the Claimant's evidence about the limited nature of the home care support he received?

¹ General Division decision, para. 29

[7] Did the General Division err in law by failing to consider the possibility that the Claimant could bring forward evidence of exceptional circumstances?

ANALYSIS

[8] The Appeal Division may intervene in a decision of the General Division only if it can find that the General Division has made one of the types of errors described by the “grounds of appeal” in section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

[9] To grant this application for leave and to allow the appeal process to move forward, I must first find that there is a reasonable chance of success on one or more of the grounds of appeal. A reasonable chance of success has been equated to an arguable case.²

[10] The grounds of appeal under section 58(1) are as follows:

- a) The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- b) The General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- c) The General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material.

Issue 1: Did the General Division find that there were no exceptional circumstances without regard for the Claimant’s evidence about the limited nature of the home care support he received?

[11] Section 10(4) of the *Employment Insurance Act* (EI Act) describes the requirements for antedating a claim. It states that “an initial claim for benefits made after the day when the claimant was first qualified to make the claim shall be regarded as having been made on an earlier day if the claimant shows that the claimant qualified to receive benefits on the earlier day

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

and that there was **good cause for the delay throughout the period beginning on the earlier day and ending on the day when the initial claim was made**” (emphasis added).

[12] Therefore, the General Division was correct that the Commission could not antedate the claim unless the Claimant could show good cause.³ The General Division also correctly noted that the courts have been clear that ignorance of the law, even if coupled with good faith, is not sufficient to establish good cause⁴ and that a claimant must show “that he did what a reasonable person in his situation would have done to satisfy himself as to his rights and obligations under the Act.”⁵ Finally, as the General Division stated, where a claimant does not act like a reasonable and prudent person, consideration should also be given to whether there were any exceptional circumstances.⁶

[13] The facts related to the length of the delay and the reason for the delay appear to have been accurately represented by the General Division and are not in dispute. The General Division applied settled principles of law to those facts to find that the Claimant did not do what a reasonable and prudent person would have done in his circumstances. Therefore, there is no basis on which I could discover an error in this finding.

[14] However, the Claimant’s appeal appears to be addressed to the General Division implicit finding that there were no exceptional circumstances in his case that would excuse him from acting like a reasonable and prudent person. In the Claimant’s submission to the General Division, he asserted that he did not have home care support for three full days a week but only for a single hour a day, three days per week. He repeats this argument in his appeal of the General Division’s summary dismissal.

[15] While the General Division made no explicit finding that there were no exceptional circumstances in the Claimant’s case, it did state that the Claimant’s home care support of three full days during the week would have given him the opportunity to satisfy himself as to his rights

³ General Division decision at para 24.

⁴ General Division decision at para 28.

⁵ *Supra* note 2.

⁶ General Division decision at para 29.

and obligations. This understanding of the Claimant's home care is based on the notes of a conversation between a Commission agent and the Claimant.⁷

[16] The General Division acknowledged that the Claimant's appeal submissions state that his home care support was actually limited to only one hour a day, three days per week. However, the General Division appears to have relied only on the Claimant's prior statement to the Commission when it found that the Claimant had three full days per week of home care support, and where it apparently dismissed the Claimant's care of his parents as an exceptional circumstance. It concluded that, "[the three full days during the week] would have provided the Claimant with the opportunity to research what other options were available and how to apply."

[17] I note that the General Division made no attempt to reconcile the Claimant's statement to the Commission regarding the extent of home care support, with his evidence in support of the appeal. It is not clear from the General Division's reasons that it intentionally preferred the evidence of the Claimant's earlier statement to the Commission and, if it did, why. Therefore, despite the fact that the General Division referred to the Claimant's clarification of the level of home care support he received, I am not satisfied that the General Division properly considered and analyzed his evidence.

[18] Therefore, I find that the General Division erred under section 58(1)(c) of the DESD Act by basing its decision that there was no reasonable chance of success on a finding that there were no exceptional circumstances before it, without regard for all the evidence.

Issue 2: Did the General Division err in law by failing to consider the possibility that the Claimant could bring forward evidence of exceptional circumstances?

[19] The Claimant did not frame his appeal as an appeal based on an "error of law". Nonetheless, I note that appeals to the General Division should only be summarily dismissed if it is "plain and obvious that the appeal is bound to fail, regardless of the evidence that could be presented at the hearing", as the General Division acknowledged.⁸

[20] However, the General Division does not appear to have applied this test. The existence of "exceptional circumstances" is a factual determination that could potentially be determined

⁷ GD3-60.

⁸ General Division decision at para 23.

based on a broad range of unknown factors that **might be presented** at a full hearing of the matter. The General Division did not consider the possibility that there may have been factors, other than the level of home care support he received, that would be relevant to whether his care of his parents could be found to be an exceptional circumstance. Furthermore, the General Division does not address the possibility that there may be circumstances, other than the Claimant's possible preoccupation with the care of one or both of his parents, that might be found individually or collectively to be exceptional.

[21] When the General Division found that the appeal is bound to fail, it considered only the evidence that was before it, and it failed to analyze whether the Claimant could possibly raise evidence of other facts so that exceptional circumstances. I therefore find that the General Division erred in law under section 58(1)(a) by misapplying the test for summary dismissal.

CONCLUSION

[22] The appeal is allowed. The matter is referred back to the General Division for reconsideration in keeping with section 59 of the DESD Act.

[23] The General Division is directed to proceed by way of oral hearing so far as reasonably practicable.

Stephen Bergen
Member, Appeal Division

METHOD OF PROCEEDING:	On the record
SUBMISSIONS:	J. J., Appellant