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

Citation: *N. S. v Canada Employment Insurance Commission*, 2019 SST 37

Tribunal File Number: AD-18-773

BETWEEN:

N. S.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Jude Samson

Date of Decision: January 18, 2019

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] N. S. (Claimant) received Employment Insurance (EI) sickness benefits from February 26, 2017, to June 10, 2017. The Claimant maintains that, before he submitted his application for these benefits, he was told by a Service Canada agent that he was entitled to them regardless of the fact that he had been in jail from March 6 to June 7, 2017. The agent then helped him complete his application, where he again disclosed his period of incarceration. The Respondent, the Canada Employment Insurance Commission (Commission), approved the Claimant's application but later concluded that it had done so in error because it overlooked the time he spent in jail. As a result, the Commission demanded that the Claimant repay roughly $7,500 in EI sickness benefits that he should not have received.

[3] The Claimant challenged this initial decision, but the Commission maintained it on reconsideration. The Claimant then appealed the Commission's reconsideration decision to the Tribunal's General Division, but it dismissed his appeal. In short, the General Division concluded that, regardless of any surrounding circumstances, the Claimant was not entitled to the sickness benefits that he had received for the time that he was in jail because his illness was not the only thing that prevented him from working.[1]

[4] The Claimant now wants to appeal the General Division decision to the Tribunal's Appeal Division, but he needs leave (or permission) to appeal for the file to move forward. Unfortunately for him, however, I have concluded that his appeal has no reasonable chance of success, meaning that I must refuse his application for leave to appeal.

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[1] *Employment Insurance Act* (EI Act), s 18(1)(b).

ISSUES

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

a) Is there an arguable case that the General Division committed a jurisdictional error by ignoring the possibility that the Claimant had received incorrect information from a Service Canada agent?

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

ANALYSIS

The Appeal Division's Legal Framework

[6] 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.

[7] 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.[2] The legal test that applicants need to meet at this stage is a low one: Is there any arguable ground on which the appeal might succeed?[3]

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[2] DESD Act, s 58(2).
[3] *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12; *Ingram v Canada (Attorney General)*, 2017 FC 259 at para 16.

Issue 1: Is there an arguable case that the General Division committed a jurisdictional error by ignoring the possibility that the Claimant had received incorrect information from a Service Canada agent?

[8] It is very clear that the General Division did not commit a jurisdictional error by ignoring the possibility that the Claimant had received incorrect information from a Service Canada agent.

[9] The Commission did not dispute that the Claimant might have received incorrect information from a Service Canada agent, and it seems to have accepted that it made an error when it first approved and paid the Claimant's sickness benefits.[4] There is also little doubt that repaying $7,500 will put considerable stress and strain on the Claimant's family and his finances.[5]

[10] Nevertheless, the Commission maintained that it had no choice but to apply the *Employment Insurance Act* (EI Act) as it was written, regardless of the circumstances in any particular case. In addition, the Commission argued that the General Division had no power to write off part of a debt, even in sympathetic cases.

[11] The General Division accepted the Commission's arguments, but in doing so, it did not ignore those that the Claimant had put forward. To the contrary, the General Division specifically considered the Claimant's arguments in paragraphs 7 and 8 of its decision. The General Division also cited binding legal authorities in support of its decision to prefer the Commission's arguments over those of the Claimant.

[12] In essence, the Claimant is trying to reargue his case in hopes of getting a different result, but that is not the role of the Appeal Division.[6] As mentioned above, the Appeal Division's role is limited to assessing whether the General Division committed any of the three types of errors set out in the DESD Act. In this case, however, the Claimant's allegation that the General Division overlooked the possibility that he had received incorrect information from a Service Canada agent has no reasonable chance of success.

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[4] GD3-29; GD4-1.
[5] AD1A.
[6] *Bellefeuille v Canada (Attorney General)*, 2014 FC 963 at para 31; *Rouleau v Canada (Attorney General)*, 2017 FC 534 at para 42.

[13] It is terribly unfortunate that the Claimant might have received incorrect information from a Service Canada agent, but as the General Division concluded, that in no way changes the obligation to apply the EI Act correctly.[7] In addition, with regard to the Claimant's arguments that some or all of his debt should be written off, that is something that only the Commission can do.[8] If the Commission has not yet made a decision in this regard, then perhaps it would consider doing so now.

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

[14] 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.[9] 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.

[15] After reviewing the documentary record 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 sickness benefits under the EI Act. In fact, the Claimant seems to accept that the law was applied correctly to his case.[10]

CONCLUSION

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

Jude Samson
Member, Appeal Division

REPRESENTATIVE:	N. S., self-represented

[7] *Granger v Canada Employment and Immigration Commission*, 1986 CanLII 3962 (FCA), aff'd [1989] 1 SCR 141.
[8] EI Act, s 112.1; *Employment Insurance Regulations*, s 56.
[9] *Griffin v Canada (Attorney General)*, 2016 FC 874 at para 20; *Karadeolian v Canada (Attorney General)*, 2016 FC 615 at para 10.
[10] AD1A.