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

Citation: *T. M. v Canada Employment Insurance Commission*, 2019 SST 55

Tribunal File Number: AD-18-801

BETWEEN:

T. M.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Janet Lew

Date of Decision: January 25, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] In April 2017, the Applicant, T. M. (Claimant), applied for Employment Insurance special benefits to care for a "family member who is gravely ill with a significant risk of death within 26 weeks."[1] The Respondent, the Canada Employment Insurance Commission (Commission), approved his claim. In April 2018, the Claimant applied for special benefits to provide "care or support to a critically ill family member."[2] The Commission determined that the Claimant had been paid benefits starting May 14, 2017 and that the benefit period, being 52 weeks in duration, ended May 12, 2018.[3] In other words, the Claimant would not receive any benefits after May 12, 2018. The Commission maintained its decision that the Claimant's circumstances did not allow for an extension of the benefit period beyond 52 weeks.[4]

[3] The Claimant appealed the Commission's reconsideration decision to the General Division.[5] He argued that his mother's health extended beyond the 52-week contributory period. He noted his own declining health and the barriers he encountered to finding employment. The General Division found that the Claimant's circumstances did not fall within any of the scenarios under section 10(10) of the *Employment Insurance Act* that would have allowed for an extension of his benefit period. The General Division found that the benefit period could not be extended on compassionate grounds. Therefore, it dismissed the Claimant's appeal.

[4] The Claimant now seeks leave to appeal the General Division's decision. I must decide whether there would be an arguable case on appeal. I am refusing the application for leave to appeal because I find that the appeal does not have a reasonable chance of success.

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[1] Application for benefits, at GD3-3 to GD3-10.
[2] Application for benefits, at GD3-11 to GD3-20.
[3] Commission's letter dated June 8, 2018, at GD3-21 to GD3-22.
[4] Commission's letter dated August 2, 2018, at GD3-25 to GD3-26.
[5] Notice of Appeal, at GD2.

ISSUES

[5] The issues are:

Issue 1: Is there an arguable case that the General Division failed to observe a principle of natural justice?

Issue 2: Is there an arguable case that the General Division based its decision on an erroneous finding of fact without regard for the nature of the Claimant's applications?

ANALYSIS

[6] Section 58(1) of the *Department of Employment and Social Development Act* (DESDA) provides for limited grounds of appeal. It does not give the Appeal Division any jurisdiction to conduct any reassessments. The section sets out the grounds of appeal as being limited to the following:

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 before it.

[7] Before granting leave to appeal, I need to be satisfied that the reasons for appeal fall within the grounds of appeal set out under section 58(1) of the DESDA and that the appeal has a reasonable chance of success. This is a relatively low bar. A claimant does not have to prove their case; they simply have to establish that the appeal has a reasonable chance of success based

on a reviewable error.[6] The Federal Court endorsed this approach in *Joseph v Canada (Attorney General)*.[7]

[8] The Claimant submits that the General Division erred under sections 58(1)(b) and (c) of the DESDA.

Issue 1: Did the General Division fail to observe a principle of natural justice or otherwise act beyond or refuse to exercise its jurisdiction?

[9] Natural justice is concerned with ensuring that a claimant has a fair opportunity to present their case and that proceedings are fair and free of any bias. It relates to issues of procedural fairness before the General Division, rather than the impact of its decisions on a claimant. The Claimant has not identified any issues of procedural fairness or natural justice as they relate to the General Division. The Claimant has not pointed to or provided any details to suggest that the General Division might have deprived him of an opportunity to fully and fairly present his case or that it might have exhibited any bias against him.

[10] The Claimant suggests that the General Division had the jurisdiction to extend his benefit period, but, as the General Division noted, section 10(10) of the *Employment Insurance Act*, which lists the only conditions under which the benefit period is extended, does not include the consideration of any compassionate grounds.

[11] Accordingly, I am not satisfied that the appeal has a reasonable chance of success on this particular ground.

Issue 2: Did the General Division base its decision on an erroneous finding of fact that it made without regard for the nature of the Claimant's applications?

[12] The Claimant suggests that when he lost his employment and applied for Employment Insurance benefits in April 2018, he was not seeking an extension or renewal of the special benefits that he had received in 2017. Rather, he was "simply applying for New [Employment Insurance] period benefits as [he] was physically assaulted in the workplace."[8] In other words, he

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[6] In *Fancy v Canada (Attorney General)*, 2010 FCA 63, the Federal Court of Appeal held that an arguable case is the same test as a "reasonable chance of success on appeal."
[7] *Joseph v Canada (Attorney General)*, 2017 FC 391.
[8] Application to the Appeal Division – Employment Insurance, at AD1-6.

is suggesting that the General Division based its decision on an erroneous finding of fact that he was trying to seek an extension of benefits or an extension of the benefit period, rather than deciding whether he was entitled to a new set of Employment Insurance benefits with a new benefit period.

[13] After all, the Claimant made two separate applications. The first, in April 2017, was for compassionate care benefits. When the Claimant applied for benefits in April 2018, he applied for family caregiver benefits for a critically ill adult.

[14] The General Division wrote that the Claimant submitted a "renewal application for Family Caregiver Benefits" and that "[t]he claim was renewed effective April 1, 2018."[9] That may have been misleading because, if the Commission had in fact paid family caregiver benefits in 2017, the Claimant would have been entitled to receive only 15 weeks of benefits, the maximum number of weeks of family caregiver benefits. Yet, the Claimant confirms in his application for leave to appeal that he received 26 weeks of benefits from May 14, 2017, to November 11, 2017, the maximum weeks payable for compassionate care benefits. Clearly, the General Division failed to distinguish between the two types of special benefits: family caregiver benefits and compassionate care benefits.

[15] Even so, the Commission had accepted the Claimant's application for family caregiver benefits,[10] on top of the compassionate care benefits he had already received in 2017. The Commission set out in its letter of June 8, 2018, that the Claimant could receive up to 15 weeks of benefits over a 52-week period. In this case, it determined that he was eligible for the family caregiver benefit and that payments would start on April 8, 2018, and continue for five weeks. So, in fact, the Commission was not denying the Claimant's entitlement to the family caregiver benefit.

[16] What the Commission neglected to explain in its June 8, 2018, letter was why the Claimant was limited to five weeks of family caregiver benefits and why he would not receive the full 15 weeks of benefits under this category.

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[9] General Division decision at para 3.
[10] Commission's letter dated June 8, 2018, at GD3-21.

[17] The Claimant was entitled to receive benefits only within his benefit period. As the General Division noted, an initial benefit period had been established as of May 14, 2017, according to section 10(1) of the *Employment Insurance Act*. That section defines a claimant's benefit period as starting on either the Sunday of the week in which the interruption of earnings occurs or the Sunday of the week in which the initial claim for benefits is made, whichever comes later.

[18] Under section 10(1) of the *Employment Insurance Act*, the Claimant might have been able to establish a new 52-week benefit period starting the Sunday of the week in which he made a claim for the family caregiver benefit. However, section 10(3) of the *Employment Insurance Act* states that a benefit period must not be established if an earlier benefit period has not ended. Because there was already an existing benefit period that had been established on May 14, 2017, that had yet to end when the Claimant applied for family caregiver benefits, the Claimant was unable to establish a new benefit period.

[19] While the General Division may have overlooked and not drawn any distinction between compassionate care benefits and family caregiver benefits, ultimately that did not matter because the Claimant could not establish a new benefit period under section 10(3) of the *Employment Insurance Act* anyway. He already had an existing benefit period when he applied for family caregiver benefits. The only options available to him for any additional weeks of benefits were to seek an extension of his existing benefit period or to establish that he had good cause for the delay; as far as I can determine from the facts in the hearing file, the option of establishing good cause for delay is not applicable.

[20] Although the Claimant made a claim for two different types of special benefits, this was immaterial to the General Division's determination because it had to decide whether the Claimant could extend the benefit period. In other words, even if the General Division had recognized that the first claim had been for compassionate care benefits and the second claim was for family caregiver benefits, it would have had no bearing on the outcome. The General Division would still have been required to determine the beginning of and the length of the benefit period, irrespective the nature of the applications. At the end of the day, the General

Division properly identified the issue before it and determined whether the Claimant was entitled to an extension of the benefit period.

[21] The Claimant does not otherwise allege, nor do I see, that the General Division erred in law in its interpretation and application of section 10(10) of the *Employment Insurance Act* when it decided whether the Claimant's benefit period could be extended.

CONCLUSION

[22] I am not satisfied that the appeal has a reasonable chance of success on any of the grounds that the Claimant has raised. Accordingly, the application for leave to appeal is refused.

Janet Lew
Member, Appeal Division

SUBMISSIONS:	T. M., Applicant