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

Citation: *J. M. v Canada Employment Insurance Commission*, 2019 SST 81

Tribunal File Number: AD-18-538

BETWEEN:

J. M.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Shu-Tai Cheng

Date of Decision: February 4, 2019

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, J. M. , applied for Employment Insurance (EI) sickness benefits in November 2017 after leaving his job.

[3] The Respondent, the Canada Employment Insurance Commission (Commission), refused the claim for benefits because the Applicant's medical certificate did not support his inability to work due to incapacity beyond December 2, 2017. The Applicant requested reconsideration. The Commission maintained its initial decision.

[4] The General Division found that the Applicant had not provided a medical certificate to support his claim for sickness benefits.

[5] The Applicant filed the Application with the Appeal Division and submitted that the General Division did not properly evaluate his case. He argues that the General Division's decision was wrong in law. He also submits new evidence.

[6] The Applicant also filed an application to rescind or amend the General Division decision with the General Division. The General Division rendered a decision after considering the new documents that the Applicant filed, and it concluded that they did not disclose new material facts. The General Division did not amend or rescind its August 15, 2018, decision.

[7] I find that the appeal does not have a reasonable chance of success because the Application simply repeats arguments the Applicant made to the General Division and does not disclose any reviewable errors.

ISSUES

[8] Is there an arguable case that the General Division based its decision on an error of law?

[9] Is the Applicant's new evidence admissible at the Appeal Division?

ANALYSIS

[10] An applicant must seek leave to appeal in order to appeal a General Division decision. The Appeal Division must either grant or refuse leave to appeal, and an appeal can proceed only if leave to appeal is granted.[1]

[11] Before I can grant leave to appeal, I must decide whether the appeal has a reasonable chance of success. In other words, is there an arguable ground upon which the proposed appeal might succeed?[2]

[12] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success[3] based on a reviewable error.[4] The only reviewable errors are the following: the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; erred in law in making its decision, whether or not the error appears on the face of the record; or 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.

[13] The Applicant submits that the General Division failed to take into account new medical documents and a ruling against his former employer for employment standards contraventions.

[14] I note that the documents that the General Division considered in the application to rescind and amend are the same as the ones the Applicant submitted to support this Application.

Issue 1: Is there an arguable case that the General Division based its decision on an error of law?

[15] I find that there is no arguable case that the General Division erred in law.

[16] This appeal turns on whether the Applicant had provided a medical certificate to support his claim for sickness benefits. As the claimant for sickness benefits, the Applicant must prove

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[1] *Department of Employment and Social Development Act* (DESD Act) at ss 56(1) and 58(3).
[2] *Osaj v Canada (Attorney General)*, 2016 FC 115, at para 12; *Murphy v Canada (Attorney General)*, 2016 FC 1208, at para 36; *Glover v Canada (Attorney General)*, 2017 FC 363, at para 22.
[3] DESD Act at s 58(2).
[4] *Ibid.* at s 58(1).

that he is unable to work because of illness or injury and that he would otherwise be available to work.[5] This information and evidence must be provided to the Commission in the form of a medical certificate completed by a medical doctor or other medical professional attesting to the claimant's inability to work and stating the probable duration of the illness or injury.[6]

[17] The General Division correctly stated the relevant legislative provisions and the applicable legal tests.[7]

[18] The General Division determined that the medical documentation that the Applicant provided stated that he was unfit and unable to work up to December 3, 2017. However, as of December 3, 2017, the medical certificates indicated restrictions—things the Applicant should avoid doing—but did not indicate that the Applicant was incapable of working due to his medical condition.[8]

[19] On this basis, the General Division found that the Applicant failed to provide a medical certificate to support his claim for sickness benefits from December 3, 2017, and that he was properly disentitled from receiving EI sickness benefits.

[20] The General Division correctly applied the legislative provisions to the situation.

[21] The General Division considered the Applicant's arguments and the evidence on file. It considered his testimony and each of the reasons he gave to explain the medical documentation he had provided. The General Division decision includes an analysis of each of the Applicant's arguments. The General Division did not err in law by failing to consider the Applicant's relevant arguments.

[22] A simple repetition of the Applicant's arguments falls short of disclosing a ground of appeal that is based on a reviewable error.

[23] I have read and considered the General Division decision and the documentary record. I find that the General Division did not overlook or misconstrue any important evidence. There is

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[5] *Employment Insurance Act*, s 18(1)(b).
[6] *Employment Insurance Regulations*, s 40(1).
[7] General Division decision, at paras 8 to 17.
[8] *Ibid*. at paras 10 to 13.

no suggestion that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction or that it erred in law in coming to its decision.

[24] The appeal does not have a reasonable chance of success based on this ground.

Issue 2: Is the Applicant's new evidence admissible at the Appeal Division?

[25] The Applicant's new evidence is not admissible at the Appeal Division.

[26] The Application includes as attachments:

a) Reasons for decision of the Ministry of Labour, Provincial Claims Centre, and a cover letter dated August 14, 2018, in which the author of the letter indicated that she had found contraventions of the *Employment Standards Act* and had issued a compliance order.

b) A medical certificate, dated August 20, 2018, provided by a Dr. M. Rollins.

c) A shoulder physiotherapy form, dated July 17, 2018, from Dr. M. Rollins.

d) Instructions to the Applicant for shoulder surgery on July 30, 2018.

[27] The Applicant submits these documents in support of his argument that the General Division erred in law in its decision. He also submitted an application to rescind or amend the General Division decision based on the same documents.

[28] The Tribunal put the appeal before the Appeal Division into abeyance while the General Division reviewed and completed its decision on the rescind or amend application.

Rescind or Amend Application at the General Division

[29] The General Division reviewed the new evidence in the context of the Applicant's application to rescind or amend the General Division decision, and it determined that the new evidence does not disclose new, material facts. The Ministry of Labour document does not address the Applicant's failure to provide proper medical documentation. The new medical

documents refer to the Applicant's shoulder surgery in July 2018, a time that is not material to the Applicant's claim for EI sickness benefits.

[30] The General Division issued its decision on the rescind or amend application on November 8, 2018. The Applicant has not appealed the rescind or amend decision, and the appeal period has ended.

Decision Appealed to the Appeal Division

[31] The General Division's August 15, 2018 decision is the decision on appeal to the Appeal Division.

[32] New evidence is not a ground of appeal under section 58 of the *Department of Employment and Social Development Act*. The Applicant did file an application to rescind or amend the General Division decision based on this evidence and that application was reviewed and decided on by the General Division, but the new evidence is not admissible at the Appeal Division on this Application.

[33] The new evidence was not in the record before the General Division at or before the August 8, 2018 teleconference hearing. It was filed with the Tribunal on August 28, 2018. Therefore, it cannot form the basis of an argument that the General Division made a reviewable error by not considering the information the evidence allegedly contains.

[34] The appeal does not have a reasonable chance of success based on the new evidence.

CONCLUSION

[35] I am satisfied that the appeal has no reasonable chance of success, so the Application is refused.

Shu-Tai Cheng
Member, Appeal Division

REPRESENTATIVE:	J. M. , self-represented