



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *G. S. v Canada Employment Insurance Commission*, 2019 SST 161

Tribunal File Number: AD-18-866

BETWEEN:

G. S.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: February 25, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, G. S. (Claimant), submitted an application for Employment Insurance (EI) benefits after he had been without work for 12 weeks. When he requested that his claim be antedated to the date of his lay-off, the Respondent, the Canada Employment Insurance Commission (Commission), refused. The Commission found that the Claimant did not have good cause for the delay in filing his application.

[3] The Claimant asked for a reconsideration, but the General Division maintained its original decision. The Claimant's appeal to the General Division of the Social Security Tribunal was dismissed. He now seeks leave to appeal to the Appeal Division.

[4] The Claimant has no reasonable chance of success on appeal. There is no arguable case that the General Division overlooked or misunderstood the evidence or made any finding in a perverse or capricious manner.

ISSUE

[5] Is there an arguable case that 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?

ANALYSIS

[6] 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).

[7] The grounds of appeal 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 before it.

[8] To grant this application for leave and allow the appeal process to move forward, I must find that there is a reasonable chance of success based on one or more grounds of appeal. A reasonable chance of success has been equated to an arguable case.¹

Issue: Is there an arguable case that 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?

[9] In his leave to appeal application, the Claimant argued that the Board of Referees (BOR) found his reason for delaying to be a good reason and that his delay was justified as the result of exceptional circumstances. He stated that the accidental death of close relatives during the period of his delay was an exceptional circumstance.

[10] I am uncertain why the Claimant referred to the BOR in his application for leave to appeal. The BOR was once the first level of appeal under an administrative appeal system that was replaced more than five years ago with the Social Security Tribunal. There is nothing in the file to indicate that the BOR has been involved in this case.

[11] If the Claimant is referring to the BOR as an authority to interpret how the law should be applied to the facts, the General Division was not bound to follow BOR decisions or even decisions of the Canadian Umpire Benefit to which BOR decisions were formerly appealed, and neither am I. In this case, I cannot even consider whether the reasoning of any BOR decision with similar issues or on similar facts may be persuasive because the Claimant had not cited any particular decision.

¹ *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; *Ingram v Canada (Attorney General)*, 2017 FC 259.

[12] If the Claimant had previously pursued an appeal in what he believes to be similar circumstances and obtained a positive result before the BOR at that time, there is no indication of this on the file, and it was not before the General Division. In any event, the General Division is required to make a new decision based on the evidence that is before it.

[13] The Claimant argued that the aftermath of an accident in which his close relatives died was an exceptional circumstance. The General Division took note of the Claimant's difficulty with the death of two family members,² but it did not specifically analyze its effect on his ability to apply for benefits, except to say that the Claimant's delay in applying for benefits was not out of his control—even if the unfortunate deaths of his relatives were.

[14] In this case, the Claimant discussed the death of his relatives as the last in a lengthy list of reasons why he delayed his application. The Claimant testified to his reasons as follows:

- His supervisor told him not to go on EI benefits because he would be returning to work any day (at 06:10 in the audio recording of the General Division hearing);
- He expected he could live off his savings (06:40);
- He was concerned that he would have to pay the money back at tax time (07:10);
- He was not thinking clearly because he was just surviving (07:55);
- He was proud and did not want to accept a government handout (08:40);
- He did not know how EI worked, and he believed he was too old (09:50);
- He was not thinking clearly because he had an accident three years earlier involving a head injury (10:25);
- He did not know about EI until he heard from a friend (11:30); and
- Two close family relatives who raised him when he was young died at about the same time (12:10).

[15] The General Division is not required to refer to each and every piece of evidence that is before it, but it is presumed to have considered all the evidence.³ The Claimant did not suggest that the death of family members was of any more significance than any of the several other

² General Division decision at para 12.

³ *Simpson v Canada (Attorney General)*, 2012 FCA 82.

factors given by the Claimant to explain his delay. In my view, the General Division's brief analysis of this factor does not suggest that the evidence was not considered or understood.

[16] There is no arguable case that the General Division erred under section 58(1)(c) of the DESD Act by ignoring or misunderstanding the evidence that the Claimant's family members had died. In accordance with the direction of the Federal Court,⁴ I have also considered whether any other significant evidence was ignored or overlooked, but I have been unable to find any mistake of fact that would support an arguable case that the General Division erred under section 58(1)(c) of the DESD Act.

[17] Despite the many reasons given by the Claimant to explain his delay in filing, the General Division still found that the Claimant did not do what a reasonable and prudent person would have done in the circumstances (to satisfy himself as to his or her rights and obligations under the *Employment Insurance Act*). In addition, it still found that he had not established exceptional circumstances.

[18] The Claimant has not identified how the decision is based on any finding that ignored or misunderstood evidence, and it is not the Appeal Division's role to reassess or reweigh the evidence to come to a different conclusion.⁵

[19] The Claimant has no reasonable chance of success on appeal.

CONCLUSION

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

Stephen Bergen
Member, Appeal Division

REPRESENTATIVE:	G. S., self-represented
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⁴ *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

⁵ *Bergeron v Canada (Attorney General)*, 2016 FC 220, *Marcia v Canada (Attorney General)*, 2016 FC 1367.