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

REVISED DECISION –
Corrections integrated into the main text of the original decision

Citation: *Y. W. v Canada Employment Insurance Commission*, 2019 SST 292

Tribunal File Number: AD-18-12

BETWEEN:

**Y. W.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

# SOCIAL SECURITY TRIBUNAL DECISION
## Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: ~~May 24, 2015~~ ~~May 24, 2018~~

**March 19, 2019**

Canada

## DECISION AND REASONS

### DECISION

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

### OVERVIEW

[2] The Applicant, Y. W. (Claimant), was injured in a work-related accident at the end of December 2013. The Claimant applied for and obtained regular Employment Insurance benefits from January 2014 through to September 2014. After the Respondent, the Canada Employment Insurance Commission (Commission), investigated the circumstances of her claim, it allocated certain workers' compensation wage loss benefits over the period from January 5, 2014, to March 1, 2014. Her regular benefits were retroactively converted to sickness benefits for the period from April 2014 to June 2014, based on the medical evidence available at the time. An overpayment was determined for the additional weeks of benefits that she had received.

[3] In response to the Claimant's request for reconsideration, the Commission changed its decision to entitle the Claimant to sickness benefits from December 30, 2013, until March 1, 2014. The other disentitlements for March 2, 2014, to April 9, 2014, and from June 9, 2014, to September 5, 2014, were maintained because the Claimant had not proven her availability to work in those periods.

[4] The Claimant appealed to the General Division of the Social Security Tribunal. The General Division found that the Claimant had established her entitlement to the full 15 weeks of sickness benefits in the period commencing on March 16, 2014. It also reduced the amount of her overpayment. However, it also confirmed that she had received regular benefits to which she was not entitled from July 13, 2014, to September 6, 2014, and that these benefits must still be repaid. The Claimant now seeks leave to appeal.

[5] There is no reasonable chance of success on appeal. The Claimant's ignorance of the benefits to which she was entitled and her assertion that the Commission should have educated her do not suggest that the General Division made an error of law.

## PRELIMINARY ISSUE

### Is the application for leave late?

[6] The General Division decision is dated October 12, 2017, and the leave to appeal application was filed January 2, 2018. Before I can consider the leave to appeal application, I must determine whether the application was filed late.

[7] According to s. 57(1)(*a*) of the *Department of Employment and Social Development Act* (DESD Act), an application for leave to appeal must be filed within 30 days of the date the decision is "communicated" to the appellant. While there is nothing in the Commission file to confirm the date that the General Division decision was actually communicated, s. 19(1)(*a*) of the *Social Security Tribunal Regulations* (Regulations) states that the decision is deemed to have been communicated to a party 10 days after the day on which it was sent to the party, if sent by ordinary mail.

[8] However, the Claimant says that she did not receive the first copy of the decision that was mailed. When she called the General Division on November 28, 2017, seeking a status update, she was told that the decision had already been sent to her. The Claimant was then told a second copy would be mailed. She claims that she only received the second copy of the decision on December 22, 2017.

[9] On March 29, 2018, I wrote to the Claimant to ask whether she was aware of any circumstance that might have caused such a late delivery of the decision. The Claimant did not respond.

[10] Given the lack of explanation, I have some difficulty accepting the coincidence of a significantly delayed delivery of the second copy of the decision after an initial decision that was apparently not delivered at all. However, on the basis of her November 28, 2017, call to the Commission seeking news of her decision, I will accept the Claimant's assertion that she did not receive the first decision. In respect of the second copy, I find that the Claimant has failed to rebut the s.19(1)(*a*) presumption and I therefore find that the decision was communicated to the Claimant on December 8, 2017, 10 days after the second copy was sent.

[11] Because the leave to appeal application was filed within 30 days of December 8, 2017, I will accept that the application is not late and I will consider the leave to appeal application.

**ISSUE**

[12] Is there an arguable case that the General Division erred in law by failing to correct or address the manner in which the Commission assessed the Claimant's application for benefits or informed her of her benefit entitlements?

**ANALYSIS**

**General Principles**

[13] The Claimant is appealing a decision of the General Division to the Appeal Division. The two levels of appeal are quite different. The General Division is empowered to consider and weigh the evidence that is before it and to make findings of fact. The General Division then applies the law to these facts in order to reach conclusions on the substantive issues raised by the appeal.

[14] However, the Appeal Division's task is more restricted than that of the General Division. The Appeal Division cannot intervene in a General Division decision unless it can find that the General Division has made one of the types of errors described by the "grounds of appeal" in s. 58(1) of the DESD Act, which are set out below:

> (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.

[15] Unless the General Division erred in one of these ways, the appeal cannot succeed, even if the Appeal Division disagrees with the General Division's conclusions or the result.

[16] To grant leave and allow the appeal to go forward, I must find that there is a reasonable chance of success on one or more grounds of appeal in order. A reasonable chance of success has been equated to an arguable case.[1]

**Is there an arguable case that the General Division erred in law by failing to correct or address how the Commission managed the Claimant's claim?**

[17] In her application for leave, the Claimant argues that her claim should have been assessed properly by the Commission under s. 48 and s. 50 of the *Employment Insurance Act* (Act): these provisions deal with the manner in which an initial claim is made and a benefit period established. She argued that the Commission should have informed her earlier if she was not qualified for Employment Insurance benefits.

[18] The Claimant has asserted that the General Division made an error of law under s. 58(1)(*b*) of the DESD Act, but she has not identified in what manner she believes the General Division to have erred in law. The General Division found the Claimant to be entitled to the full complement of sickness benefits under s. 12(3)(*c*) of the Act and disentitled to regular benefits during those periods in which she was unavailable for work under s. 18(1) of the Act. After adjusting for the additional sickness benefits, it found that the Claimant still received some regular benefits to which she was not entitled. The General Division also found that the Claimant was liable to repay the excess benefits she received in accordance with s. 43(*b*) of the Act, which states: "a claimant is liable to repay an amount paid by the Commission to the claimant as benefits […] to which the claimant is not entitled".

[19] The Claimant asked the General Division to "reverse" the overpayment, but, as noted in the Federal Court of Appeal decision in *Knee*[2] cited by the General Division, "adjudicators are permitted neither to re-write legislation nor to interpret it in a manner that is contrary to its plain meaning". The General Division applied the correct law to determine whether the Claimant had proven her availability to receive regular benefits and entitlement to sickness benefits and whether she was liable to repay any overpayment of benefits. These were the issues before the

[1] *Canada (Minister of Human Resources)v. Hogervorst*, 2007 FCA 41; *Ingram v. Canada (Attorney General)*, 2017 FC 259
[2] *Canada (Attorney General) v. Knee*, 2011 FCA 301

General Division, and there is no arguable case that the General Division erred in law in its consideration of these issues.

**Exercise of Jurisdiction**

[20] The Claimant's argument might also be understood to be a claim that the General Division failed to exercise its jurisdiction under s. 58(1)(*a*) of the DESD Act by failing to address the manner in which the Commission managed the Claimant's application for benefits. The Claimant suggests that she now considers it unfair that she should have to repay benefits that, at the time when she received them, disqualified her from accessing other social benefits. She believes her loss of those other benefits is related to the advice and direction she received from the Commission.

[21] Regardless of whether the Claimant was unaware or misinformed as to the benefits to which she should be entitled, the General Division does not have the jurisdiction to consider, or the authority to correct, the manner in which the Commission manages or administers claims. It is also unable to address the manner in which the payment of Employment Insurance benefits may intersect with entitlement under other social benefit schemes. The General Division fully exercised its jurisdiction in addressing those issues over which it had jurisdiction, and there is no arguable case that the General Division erred under s. 58(1)(*a*) of the DESD Act.

[22] Following the direction of the Federal Court from other decisions such as *Karadeolian*,[3] I have also reviewed the record for evidence that was overlooked or misunderstood. However, I am unable to find an arguable case in relation to such an error.

[23] There is no reasonable chance of success on appeal.

**CONCLUSION**

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

Stephen Bergen
Member, Appeal Division

[3] *Karadeolian v. Canada (Attorney General)*, 2016 FC 615

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| REPRESENTATIVES: | Y. W., self-represented |