



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. H. v Canada Employment Insurance Commission*, 2019 SST 1460

Tribunal File Number: AD-19-580

BETWEEN:

M. H.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Janet Lew

Date of Decision: December 23, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, M. H. (Claimant), is seeking leave to appeal the General Division's decision of July 22, 2019. Leave to appeal is the first step of the appeals process. It means that an applicant has to get permission from the Appeal Division before moving on to the second and final stage of the appeal process.

[3] The General Division determined that the Claimant was late when he applied for Employment Insurance benefits. It also determined that he did not have good cause for the delay in filing his application for benefits. It found that he did not act as a reasonable and prudent person would have done in the same circumstances. It did not allow his application to be antedated (backdated). The Claimant argues that the General Division failed to fully consider the evidence.

[4] I have to be satisfied that the appeal has a reasonable chance of success before granting leave to appeal. I am not satisfied that the appeal has a reasonable chance of success and I am therefore refusing the application for leave to appeal.

ISSUES

[5] The issues before me are as follows:

- (a) Can the Appeal Division consider new evidence?
- (b) Is there an arguable case that the General Division process was unfair?
- (c) Is there an arguable case that the General Division overlooked important information regarding his mental health challenges?

ANALYSIS

[6] Before the Claimant can move on to the next stage of the appeal, I have to be satisfied that the Claimant's reasons for appeal fall into at least one of the types of errors listed in subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA). The types of errors are:

1. The General Division process was unfair.
2. The General Division did not decide an issue that it should have decided. Or, it decided something that it did not have the power to decide.
3. The General Division made an error of law when making its decision.
4. The General Division based its decision on an important error of fact.

[7] The appeal has to have a reasonable chance of success. A reasonable chance of success is the same thing as an arguable case at law.¹ This is a relatively low bar because applicants do not have to prove their case; they simply have to show that there is an arguable case.

(a) Can the Appeal Division consider new evidence?

[8] The Claimant experienced significant personal stressors in December 2018. One of his dogs had to undergo an emergency surgery and the surgery was costly. His former partner took their dogs and, on top of that, he lost his job and was unable to find work again for a while. The Claimant provided two letters with his application. The first letter, dated July 25, 2019, is from his family physician. The second letter, dated August 20, 2019, is from an alternative health leader. Both health care providers address his mental health struggles.

[9] The Claimant relies on the two medical letters to show how his mental health issues have affected him. He claims that his "ability to act as a reasonable person with regards to applying for Employment Insurance benefits was compromised by [his] mental state."² He claims that

¹ This is what the Federal Court of Appeal said in *Fancy v. Canada (Attorney General)*, 2010 FCA 63.

² See Appendix A to Claimant's Application to the Appeal Division – Employment Insurance, filed September 20, 2019.

because of his mental state, he had good cause for being late when he filed an application for Employment Insurance benefits.

[10] Both letters are new, in the sense that the General Division did not have them. As a general rule, the Appeal Division does not consider new evidence. There are exceptions. For instance, if new evidence helps to understand the issues relevant to the appeal but does not add new evidence on the merits, or if it highlights defects in the evidence that was before the General Division, then the Appeal Division might be able to accept it. But, the Claimant's evidence does not fall within any of the exceptions to the general rule against accepting new evidence.³ As such, I cannot accept the two letters as part of this application to the Appeal Division.⁴

(b) Is there an arguable case that the General Division process was unfair?

[11] The Claimant argues that the General Division process was unfair.⁵ However, there is no evidence to suggest that the General Division member failed to give the Claimant adequate notice of the hearing or that there were any issues over the disclosure of documents, the manner in which the General Division conducted the hearing, or any other procedure that affected the Claimant's right to be heard or to answer the case. There is no issue either that the General Division member was biased or had prejudged the appeal.

[12] None of the Claimant's arguments before me has to do with whether the process itself was fair or conducted in accordance with the principles of natural justice.

(c) Is there an arguable case that the General Division overlooked important information?

[13] The Claimant states that although he applied for jobs, he lacked the mental presence and clarity to be able to secure a position. He suggests that he would have readily secured a job if he

³ See *Marcia v Canada (Attorney General)*, 2016 FC 1367.

⁴ The Claimant made an application under section 66 of the *Department of Employment and Social Development Act* to rescind or amend the General Division decision. The General Division refused his application to rescind or amend. The Claimant has not filed an appeal of that decision.

⁵ See Application to the Appeal Division – Employment Insurance, filed on August 20, 2019, at AD1-5.

did not have any mental health issues. After all, he had had several phone and in-person interviews. And, the job market was highly favourable.⁶

[14] The Claimant claims that because he did not seek immediate medical advice or treatment, his mental health issues hindered him from making his Employment Insurance application on time. He argues that his ability to act as a reasonable person with regards to applying for Employment Insurance benefits was “compromised by [his] mental state.”⁷

[15] In his appeal to the General Division, the Claimant wrote about his personal stress. He wrote about his dog’s need for surgery and the enormous costs.⁸ He stated that the “extreme stress from the above circumstances has had a detrimental impact on [his] mental health for several months, which was a major distraction in regards to applying for EI benefits in a timely manner.”⁹

[16] The Claimant documented his extensive job search efforts. He wrote that he “focused actively on gaining new employment,”¹⁰ instead of making a claim for Employment Insurance benefits.

[17] At the same time, the Claimant wrote that he thought that he was ineligible for Employment Insurance benefits. Because of this, he failed to appreciate that he needed to make a timely application. He also failed to appreciate that he did not have to wait to receive a record of employment. He was unaware that he could access his record of employment online. Once he accessed his record of employment, he applied for Employment Insurance benefits.¹¹

[18] The Claimant argues that the General Division failed to “truly consider the impact of [his] mental health during the antedate period.”¹² The Claimant asserts that the General Division punished him for his mental health issues. He argues that it is unfair, inhumane, and

⁶ See Appendix A to Claimant’s Application to the Appeal Division – Employment Insurance, filed on September 20, 2019.

⁷ *Ibid.*

⁸ See Reasons for Request for Reconsideration, dated May 8, 2019, at GD3-22 to GD3-24, and Notice of Appeal – Employment Insurance – General Division, dated June 17, 2019, at GD2-6 to GD2-7.

⁹ Reasons for Request for Reconsideration, dated May 8, 2019, at GD3-23.

¹⁰ *Ibid.*

¹¹ See

¹² See Appendix A to Claimant’s Application to the Appeal Division – Employment Insurance, filed on September 20, 2019.

unconstitutional to punish individuals with mental health challenges. He urges me to consider his mental health issues.

[19] Despite his claims, the Claimant however did not have any supporting medical evidence before the General Division. He did not have any evidence to show that his mental health issues interfered with his functioning and ability to make a timely application.

[20] Nevertheless, the General Division did in fact consider the Claimant's evidence regarding his personal stressors. The General Division member acknowledged the Claimant's evidence that stressors affected his mental health.

[21] The General Division accepted the Claimant's evidence that he was under stress. While there may not have been any medical records, the General Division considered how the Claimant's stress and mental health affected him overall. It examined whether the Claimant had the mental fortitude to engage in other pursuits. It found that the Claimant's stress did not stop him from looking for a new job. After all, there was evidence that he had sent numerous applications to prospective employers. He had also participated in several interviews.

[22] Because the Claimant was able to look for a new job, the General Division determined that he had to have been capable of looking for information about Employment Insurance. In other words, the General Division determined that there was insufficient evidence to show that the Claimant's mental health left him incapable of applying for Employment Insurance benefits on time.

[23] Finally, the Claimant is also re-arguing his case and asking me to reassess the evidence and come to a different conclusion based on the same facts that were before the General Division. However, subsection 58(1) of the DESDA does not allow for a reassessment of the evidence or a rehearing of the matter.

CONCLUSION

[24] I am not satisfied that there is an arguable case that the General Division failed to consider the Claimant's mental health issues. It considered the evidence that was available before it. Ultimately, it determined that the Claimant's mental health issues did not stop him from being

able to send out job applications. As such, the General Division found that while the Claimant had mental health challenges, they did not rise to the level that left him unable to enquire about the Employment Insurance process or to apply for benefits.

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

Janet Lew
Member, Appeal Division

REPRESENTATIVE:	M. H., Self-represented
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