Citation: *SR v Canada Employment Insurance Commission*, 2021 SST 383

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	S. R.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated July 16, 2021 GE-21-1050

Tribunal member:	Stephen Bergen
Decision date:	July 27, 2021
File number:	AD-21-251

Decision

[1] I am refusing leave (permission) to appeal. The appeal will not proceed.

Overview

[2] The Claimant stopped working due to illness. He applied for Employment Insurance special benefits for sickness (sickness benefits). The Canada Employment Insurance Commission (Commission) established a claim and paid sickness benefits to the Claimant.

[3] The Claimant asked the Commission to give him more than 15 weeks of sickness benefits. He stated that he would not be able to return to work in 15 weeks because of his chemotherapy treatments and his need for surgery. The Commission refused to give him more than 15 weeks. It would not change its decision when the Claimant asked it to reconsider.

[4] The Claimant appealed to the General Division of the Social Security Tribunal but the General Division dismissed his appeal. The General Division stated that law allows a maximum of 15 weeks of sickness benefits.[1]

[5] The Claimant is now asking for leave to appeal the General Division decision to the Appeal Division.

[6] I am refusing leave to appeal. The Claimant has not made out an arguable case that the General Division made an important error of fact.

What Grounds Can I Consider for the Appeal?

[7] To allow the appeal process to move forward, I must find that there is a "reasonable chance of success" on one or more of the "grounds of appeal" found in the

[1] General Division decision, para 7.

law. A reasonable chance of success means that there is an arguable case. This would be some argument that the Claimant could make and possibly win.[2]

[8] "Grounds of appeal" means reasons for appealing. I am only allowed to consider whether the General Division made one of these types of errors:[3]

a) The General Division hearing process was not fair in some way.
b) The General Division did not decide an issue that it should have decided. Or, it decided something it did not have the power to decide.
c) The General Division based its decision on an important error of fact.
d) The General Division made an error of law when making its decision.

Preliminary Matters

[9] The Claimant submitted a May 20, 2021 letter from his oncologist.[4] This was not evidence that was available to the General Division so it is new evidence. The Appeal Division is not authorized to accept new evidence and I will not be considering it in this appeal.[5]

Issue

[10] Is there an arguable case that the General Division ignored or misunderstood evidence when it found that the Claimant could not receive more than 15 weeks of benefits?

Analysis

[11] The Claimant argues that the General Division made an important error of fact. In his submission, he speaks of his cancer treatment, surgery, and his compromised

---

[2] This is explained in a case called *Canada (Minister of Human Resources Development) v Hogervorst*, 2007, FCA 41; and in *Ingram v Canada (Attorney General)*, 2017 FC 259.
[3] This is a plain-language version of the three grounds. The full text is in section 58(1) of the *Department of Employment and Social Development Act.*
[4] Coded in the file as AD1-12.
[5] Two Federal Court decisions that confirm that the Appeal Division may not consider new evidence are: *Canada (Attorney General) v O'Keefe*, 2016 FC 503 , *Marcia v. Canada (Attorney General*), 2016 FC 1367)

immune system. He is emphatic that he can't return to work. Presumably, he is arguing that the General Division ignored or misunderstood the extent to which his illness has prevented, and continues to prevent, him from returning to work.

[12] The General Division accepted that the Claimant qualified for 15 sickness benefits but said that he could not receive more. It reviewed what the *Employment Insurance Act* (EI Act) says about sickness benefits. Referring to section 12(3)(c) of the EI Act, the General Division noted that 15 weeks is the maximum number of weeks for which benefits may be paid because of illness or injury.[6]

[13] The General Division accepted that the Claimant was incapable of work for at least 15 weeks. Unfortunately for the Claimant, the General Division was correct about the law. The EI Act does not offer more than 15 weeks of sickness benefits within a benefit period. It doesn't matter whether the Claimant can prove that he cannot work for a period that is greater than 15 weeks.

[14] The problem for the Claimant is not that the General Division did not consider or understand the Claimant's evidence. The problem is that the General Division was required to apply the law as it is written.

[15] There is no arguable case that the General Division ignored or misunderstood the Claimant's evidence of his medical condition or treatments, or their effect on his ability to work.

[16] The Claimant has no reasonable chance of success.

Conclusion

[17] I am refusing the Claimant permission to appeal. This means that the appeal will not proceed.

Stephen Bergen
Member, Appeal Division

[6] Supra note 1.