Citation: *NO v Canada Employment Insurance Commission*, 2022 SST 986

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	N. O.
Respondent:	Canada Employment Insurance Commission
Decision under appeal:	General Division decision dated August 29, 2022 (GE-22-1818)
Tribunal member:	Stephen Bergen
Decision date:	October 4, 2022
File number:	AD-22-640

Decision

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

Overview

[2] The Applicant, Mr. O. (Claimant), left his employment at X in March 2020 and applied for regular Employment Insurance benefits on October 9, 2020. The Commission decided that he had left his employment voluntarily without just cause. This disqualified the Claimant from receiving regular benefits. The Commission wrote to the Claimant on November 13, 2020 to inform him of its decision. In the same letter, the Commission told the Claimant that he might still be able to receive special benefits, including sickness benefits.

[3] The Claimant started working again in January 2021, but he was away on sick leave from Monday, July 18, 2021, until August 28, 2021. He applied to renew his claim on September 9, 2021 and requested sickness benefits. On September 17, 2021, he asked the Commission to antedate (backdate) his renewal to July 18, 2021.

[4] On September 22, 2021, the allowed the antedate to July 18, 2021 so that it could pay the Claimant sickness benefits. It accepted that the Claimant had good cause for delaying his application for benefits from July 18, 2021 until his renewal application.

[5] On October 8, 2021, the Claimant asked the Commission to antedate his claim all the way back to January 31, 2021. The Commission refused this request on December 21, 2021. It did not accept that the Claimant had good cause for any of the delay between January 31, 2021 and July 17, 2021. The Claimant asked the Commission to reconsider but it would not change its decision.

[6] The Claimant appealed the Commission's decision on the reconsideration to the General Division, but the General Division denied his appeal. He is now seeking leave (permission) to appeal the General Division decision to the Appeal Division.

[7] I am refusing leave to appeal. The Claimant has not made out an arguable case that the General Division made any error that I can consider at the Appeal Division.

Issue

[8] Is there an arguable case that the General Division failed to decide something it was required to decide or that it decided something that it did not have the power to decide (jurisdictional error)?

[9] Is there an arguable case that the General Division based its decision on a finding of fact that ignored or misunderstood relevant evidence?

Analysis

General Principles

[10] For the Claimant's application for leave to appeal to succeed, the Claimant's reasons for appealing would have to fit within the "grounds of appeal." The "grounds of appeal" identify the only kind of errors that I can consider. These errors are described below:[1]

1. The General Division hearing process was not fair in some way.
2. 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 (error of jurisdiction).
3. The General Division based its decision on an important error of fact.
4. The General Division made an error of law when making its decision.

[11] To grant this application for leave and permit the appeal process to move forward, I must find that there is a reasonable chance of success on one or more

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[1] 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.*

grounds of appeal. The Courts have equated a reasonable chance of success to an "arguable case".[2]

[12] When the Claimant completed his Leave to Appeal application, he selected two grounds of appeal. He asserted that the General Division had made a jurisdictional error and that it had made an important error of fact.

Error of Jurisdiction

[13] The Claimant has not said why he believes the General Division made a jurisdictional error. No such error is apparent on the face of the General Division decision. However, I note that the Claimant suggested to the General Division that he should be entitled to Canada Emergency Response Benefit (CERB). The General Division told him that it did not have jurisdiction over that issue, or over whether he was entitled to regular benefits.

[14] The *Employment Insurance Act* (EI Act) restricts the jurisdiction of the General Division. The General Division can only consider the issue or issues that were decided in the Commission's reconsideration decision.[3]

[15] There is no arguable case that the General Division made an error of jurisdiction. The General Division considered only the issues arising from the reconsideration decision. The reconsideration decision did not talk about the Claimant's entitlement to CERB (which is not a benefit under the Employment Insurance Act) or about the Claimant's entitlement to regular Employment Insurance benefits. The decision reviewed whether the Claimant had good cause for delaying his application (or renewal application) for sickness benefits for the entire period of the delay.

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[2] *Canada (Minister of Human Resources Development) v Hogervorst,* 2007 FCA 41*; Ingram v Canada (Attorney General)*, 2017 FC 259.
[3] Sections 112 and 113 of the *Employment Insurance Act*.

[16] The General Division concluded that the Claimant did not have good cause for the delay between January 31, 2021, and July 17, 2021.[4]. This meant that it must hold that the Claimant was not entitled to an antedate of his benefit period for the "earlier period"[5] (from January 31 to July 18, 2021). The General Division did not consider any other issue or make any other decision.

[17] The General Division did not fail to make a decision over which it had jurisdiction and it did not make any decision outside of its powers.

Error of fact

[18] In his leave to appeal application, the Claimant says that he disagrees with the General Division for several reasons. First, he refers to paragraph 5 of the General Division decision, where the General Division stated that the Claimant made his renewal claim on September 9, 2021 and that this is more than three weeks after any other claim that he had made. The Claimant states that he had not received any benefits until he requested the antedate.

[19] I believe the Claimant means to argue that the General Division must have misunderstood his circumstances. He had not filed any biweekly benefit claims at all (or received any benefits), so he may be confused how he could have made a renewal claim "more than three weeks" after making a claim.

[20] However, the General Division did not make a mistake of fact. The General Division was only saying that the Claimant's September 9, 2021 claim was more than three weeks from when the Claimant made his initial claim (in October 9, 2020). When the Claimant made his renewal application on September 9, 2021, the Claimant was asking for sickness benefits. Even though the Commission may disqualify a claimant

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[4] The "good cause" test for antedating a claim applicable in this case is found at section 10(5) of the Act.
[5] See paragraph 23 of the General Division. The "earlier period" is a reference to the period from January 31 to July 17, 2021). The Commission allowed the antedate to July 18, 2021 in a separate decision, which was not before the General Division.

from receiving regular benefits, it can still suspend that disqualification during a period in which the claimant would be entitled to sickness benefits.[6]

[21] The Claimant had not been making biweekly benefit claims or receiving benefits because the Commission had denied the October 9, 2020 claim and disqualified him from receiving regular benefits. However, this has nothing to do with whether the Claimant's September 2021 renewal application was more than three weeks after he made a claim for benefits. The law required the Claimant to prove that he had good cause for the delay in making the renewal application because more than three weeks had passed between the original October 2020 claim and the September 2021 renewal claim.

[22] The Claimant was also concerned about paragraph 11 of the General Division decision. He seems to believe that the General Division must not have fully appreciated his circumstances because it was considering whether he had been acting as a reasonable and prudent person.

[23] However, the General Division did not draft paragraph 11 to address the particular facts of the Claimant's appeal. Paragraph 11 only outlines some of the legal principles that would govern the General Division's decision. The General Division obtained those principles from decisions of the Federal Court. The General Division is required to follow decisions of the Federal Court, as a matter of law.

[24] The General Division did not make an error of fact in citing legal principles. Nor did it make an error of law. Those legal principles are still good law, and they are applicable to the issues that the Claimant is disputing.

[25] Finally, the Claimant disagrees with paragraph 20 of the General Division decision. The General Division stated that the Claimant did not provide medical evidence for the period starting in January 2021. In response to this, the Claimant now says that he failed to mention that he had asked his doctor for a medical note in support

[6] Section 30(4) of the *Employment Insurance Act.*

of a medical leave request in June, but that he was having trouble getting an appointment.

[26] The Claimant says he did not tell the General Division about the medical note. But the General Division did not have this evidence. It could not make an error by not reviewing evidence that it did not have. Furthermore, the Appeal Division is generally not allowed to consider new evidence that was not before the General Division. I would not be able to consider new evidence in the present circumstances.[7]

[27] However, it seems that some of this evidence is not new evidence. It is part of the General Division record. In September 2021, the Claimant asked the Commission for the antedate to July 18, 2021. He told the Commission that he had delayed his application because he was trying to get in to see the doctor, even though he did not say that this was associated with a request for leave in June 2021.[8]

[28] At the General Division, the Claimant's main argument was that he had good cause because he had did not know about sickness benefits until he talked to his doctor. The Claimant said that he finally spoke to his doctor in mid-August 2021 and that this was when he learned about sickness benefits.[9]

[29] The General Division said that the earliest medical evidence was from April 21, 2021 and that the worker had not provided "medical evidence for the period starting in January 2021." This is accurate, as far as it goes. There is some evidence that the Claimant told the Commission that he had had other medical notes for the period of September 2021,[10] and that he said he saw his doctor in August,[11] but these things are

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[7] *Hideq v. Canada (Attorney General), 2017 FC 439, Parchment v. Canada (Attorney General), 2017 FC 354.* The exceptional circumstances in which the Appeal Division may consider new evidence are the same as those identified in *Sharma v. Canada (Attorney General), 2018 FCA 48.*
[8] GD3-24.
[9] GD3-61; Audio recording of General Division oral hearing at timestamp 00:18:50.
[10] GD3-63.
[11] GD3-61.

not “medical” evidence. Furthermore, there was no evidence to suggest that the Claimant had been trying to see a doctor until he stopped working in July 2021.[12]

[30] I recognize that the General Division decision does not specifically refer to evidence that the Claimant learned about sickness benefits when he spoke to his doctor in August. However, this does not mean that the General Division made an error of fact.

[31] First, the General Division is not required to mention each and every piece of evidence. Instead, it may be presumed to have considered all the evidence before it.[13]

[32] Second, there can only be an arguable case that the General Division made an error of fact, if the General Division **based its decision** on a finding of fact that ignored or misunderstood the evidence.[14]

[33] The General Division based its decision on the fact that the Claimant did not take reasonably prompt steps to determine his or her entitlement to benefits and entitlements under the Act. It found that the Claimant knew how to contact the Commission but that he made no efforts to enquire of the Commission about his entitlement to sickness benefits. While it is true that the General Division did not refer to the Claimant’s evidence that he only learned about sickness benefits from his doctor in August 2021, it was not required to do so. That evidence was not relevant to the finding on which the General Division based its decision.

[34] There is no arguable case that the General Division ignored or misunderstood any evidence reason that might have helped to explain why the Claimant waited until October 2021 to seek information about his entitlement to sickness benefits (for the period from January 31, 2021 until July 17, 2021).

[12] Audio recording of General Division oral hearing at timestamp 00:58:40.
[13] *Simpson v Canada (Attorney General), 212 FCA 82.*
[14] *Department of Employment and Social Development Act*, Section 58(1)(c).

[35] The Claimant has not pointed to any piece of mishandled evidence related to the findings on which General Division based its decision. Even so, I have searched the appeal record for an arguable case that the General Division may have missed or misunderstood important evidence, because the Federal Court has directed the Appeal Division to look beyond the stated grounds of appeal.[15]

[36] I have not found anything that would support an arguable case that the General Division made an important error of fact.

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

Conclusion

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

Stephen Bergen
Member, Appeal Division

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