Citation: *HC v Canada Employment Insurance Commission*, 2022 SST 1124

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	H. C.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated August 26, 2022 (GE-22-2446)

Tribunal member:	Stephen Bergen
Decision date:	October 31, 2022
File number:	AD-22-712

Decision

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

Overview

[2] The Applicant, H. C., is the Claimant in this case. He applied for Employment Insurance benefits on or about December 8, 2021.[1] However, he wanted his benefits to start earlier. He asked the Canada Employment Insurance Commission (Commission) to treat his application as though it had been made earlier, on July 5, 2021. This is called "antedating" the application.

[3] The Commission refused the Claimant's request to antedate. It did not accept that the Claimant had good cause (an explanation that the law accepts) for the delay over the entire period of the delay. The Claimant asked it to reconsider, but it did not change its decision.

[4] The Claimant appealed the Commission's reconsideration decision to the General Division. The General Division agreed with the Commission's decision and dismissed the appeal. The Claimant is now asking for leave to appeal the General Division decision to the Appeal Division.

[5] I am refusing the Claimant's application for leave to appeal. There is no arguable case that the General Division made an important error of fact.

Preliminary matters

[6] The Claimant has sent the Appeal Division a medical note dated October 13, 2022.[2]

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[1] The exact date of the Claimant's application is uncertain. The application form itself is dated December 8, 2021. However, the Commission suggested that the Claimant was "in the process" of applying on December 8, 2021 (GD3-18). Later, the Commission said that the Claimant had made the application on December 6, 2021 (GD3-19). The Commission's April 5, 2022, decision says that the Claimant did not have good cause between July 5, 2021, and December 3, 2021.
[2] See AD01B.

[7] With few exceptions, the Appeal Division may not consider new evidence that was not before the General Division when it made its decision.[3]

[8] The medical note is new evidence. It does not fall within one of those exceptions, and I will not be considering it.

Issues

[9] Is there an arguable case that the General Division ignored or overlooked evidence of the Claimant's medical conditions or prescriptions?

[10] Is there an arguable case that the General Division failed to consider the evidence of the Claimant's circumstances as a whole?

Analysis

General principles

[11] For the Claimant's application for leave to appeal to succeed, his reasons for appealing have to fit within the "grounds of appeal." 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 grounds of appeal.

[12] The grounds of appeal identify the kinds of errors that I can consider. I may consider only the following errors:

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 (error of jurisdiction).
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.[4]

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[3] See *Parchment v Canada (Attorney General)*, 2017 FC 354; and *Marcia v Canada (Attorney General)*, 2016 FC 1367. Also see *Sibbald v Canada (Attorney General)*, 2022 FCA 157.
[4] This is a plain language version of the four grounds. The full text is in section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

[13] The Courts have equated a reasonable chance of success to an "arguable case."[5]

Important error of fact

– Effect of mental health condition

[14] The Claimant argues that the General Division overlooked evidence of his "mental circumstances," which he identifies as medical conditions and his use of prescription medication with "mental effects."[6]

[15] There is no arguable case that the General Division made an important error of fact about the effect of the Claimant's mental health condition.

[16] The General Division found that the Claimant's "health issues" did not prevent him from working or looking into his rights. The decision does not mention anxiety or speak specifically about a mental health condition.

[17] Nonetheless, it seems the General Division had the Claimant's anxiety in mind when it discussed his "health issues." At the hearing, the General Division specifically questioned the Claimant about his anxiety and its effects. When it wrote the decision, it included a footnote to "health issues" to direct the reader to GD2-6, a page of the Notice of Appeal.[7] This is the page where the Claimant mentioned his two health issues: a hemorrhoid condition and anxiety.

[18] The Claimant's testimony was the only evidence that of his anxiety or its effects on him. When he told the General Division that he had anxiety, the General Division member asked him how it affected him.[8] The Claimant said he felt overwhelmed and mentally "dysfunctional."[9] Additionally, he testified that he took medication that caused him to lose focus.

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[5] See *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; and *Ingram v Canada (Attorney General)*, 2017 FC 259.
[6] See Application to the Appeal Division at AD1-4.
[7] See paragraph 16 of the General Division decision.
[8] Listen to the audio recording of the General Division hearing at 0:18:34.
[9] Listen to the audio recording of the General Division hearing at 0:19:18.

[19] To identify an arguable case that the General Division made an important error of fact, I need to find an arguable case that the General Division may have **based its decision** on a finding of fact that overlooked or misunderstood evidence.[10]

[20] The General Division was clearly aware of the Claimant's mental health concerns. It acknowledged that the Claimant had health issues that affected his concentration and judgement.[11] It also noted his evidence that they made his life more difficult.[12]

[21] However, the Claimant also gave evidence that there had been only a few days (during the period of the delay) in which he felt that he could not work, apply for work, or do anything else.[13] The General Division found that the Claimant's health issues did not prevent him from working or looking into his rights, based on this evidence.[14]

[22] There is no arguable case that the General Division's decision is based on an oversight or misunderstanding of the evidence of the Claimant's anxiety or its effect.

– **Effect of medication**

[23] There is also no arguable case that the General Division made an error by overlooking proof of the prescribed medication.

[24] There is a copy of a prescription in the record. It is an almost completely illegible document.[15] Someone has annotated the prescription with a note that reads, "Anxiety prescribed medication."

[25] The Claimant is correct that the General Division decision does not refer to the prescription. However, the General Division does not have to mention each and every

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[10] See section 58(1)(c) of the DESD Act.
[11] See paragraph 16 of the General Division decision.
[12] See paragraph 16 of the General Division decision.
[13] Listen to the audio recording of the General Division hearing at 0:21:10.
[14] See paragraph 16 of the General Division decision.
[15] See GD3-51.

piece of evidence. It is generally presumed to have considered all the evidence, except where it fails to mention relevant evidence that would be important to its decision.[16]

[26] The prescription evidence is not so important that the General Division should have mentioned it.

[27] The General Division reached its decision by following case law that explains what a claimant must show to prove that they have good cause for delay. It referred to one court decision that says a claimant must act as a reasonable and prudent person for the entire delay. It also referred to another court decision that says a claimant must show that they took reasonably prompt steps to understand their entitlement to benefits and obligations under the law.[17]

[28] Because of the case law, the General Division could not allow the appeal unless it found that the Claimant had good cause for **the entire period** of the delay.

[29] Even if the date and the medication name were legible on the prescription document, the mere existence of a prescription would have said little about the Claimant's abilities over the entire period of the delay. The medication may well have affected his focus, as the Claimant testified. Even so, he said that he was unable to function **for only a few days** during the period of the delay. The prescription evidence could not prove the contrary: It could not prove that the Claimant was incapable of looking into his entitlement to benefits for the entire delay.

– **Circumstances as a whole**

[30] There is no arguable case that the General Division made an important error of fact by overlooking the combined effect of the various circumstances raised by the Claimant.

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[16] See *Simpson v Canada (Attorney General)*, 2012 FCA 82; and *Lee Villeneuve v Canada (Attorney General)*, 2013 FC 498.
[17] See paragraphs 11 and 12 of the General Division decision.

[31] The General Division recognized that the Claimant believed he had good cause for the delay because of a combination of several circumstances.[18]

[32] However, the General Division did not overlook the combination of circumstances. Rather, it did not accept that all the circumstances explained the delay in applying for the entire period of the delay. It explained that the Claimant's various circumstances were not all present at the same time, or for the entire period.

[33] The Claimant may disagree with the General Division's conclusion or he may be concerned with how the General Division weighed the effects of his various circumstances. However, these are not grounds of appeal that I may consider.

[34] The Claimant has not pointed to any piece of overlooked or misunderstood evidence that relates to any finding on which the General Division based its decision. Even so, the Federal Court has directed the Appeal Division to look beyond the stated grounds of appeal where applicants are unrepresented.19 Therefore, I have searched the appeal record for an arguable case that the General Division may have missed or misunderstood important evidence.

[35] I have not found anything in the record to support an arguable case that the General Division made an important error of fact.

[36] The Claimant's appeal has no reasonable chance of success.

Conclusion

[37] I am refusing leave to appeal. This means that the appeal will not proceed.

Stephen Bergen
Member, Appeal Division

[18] See paragraphs 14 and 21 of the General Division decision.
[19] See *Karadeolian v Canada (Attorney General)*, 2016 FC 615.