Citation: *BS v Canada Employment Insurance Commission*, 2022 SST 1369

# Social Security Tribunal of Canada
## Appeal Division

# Leave to Appeal Decision

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| **Applicant:** | B. S. |
| **Respondent:** | Canada Employment Insurance Commission |

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| **Decision under appeal:** | General Division decision dated June 23, 2022 (GE-21-854) |

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| **Tribunal member:** | Janet Lew |
| **Decision date:** | November 18, 2022 |
| **File number:** | AD-22-444 |

## Decision

[1] Leave (permission) to appeal is refused. The appeal will not proceed.

## Overview

[2] The Applicant, B. S. (Claimant), is appealing the General Division decision.

[3] The General Division found that the Claimant did not have good cause for the delay in claiming Employment Insurance sickness benefits or in requesting regular benefits. The General Division concluded that it could not treat her reports (claims) for sickness benefits or her request for regular benefits as though she had made them earlier than she did. As a result, the Claimant was not entitled to receive Employment Insurance benefits.

[4] The Claimant argues that the General Division made legal and factual errors. She argues, among other things, that the evidence showed that she had good cause for the delay, but that the General Division overlooked this evidence.

[5] Before the Claimant can move ahead with her appeal, I have to decide whether the appeal has a reasonable chance of success.[1] Having a reasonable chance of success is the same thing as having an arguable case.[2]

[6] I am not satisfied that the appeal has a reasonable chance of success. Therefore, I am not giving the Claimant permission to move ahead with her appeal.

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[1] Under section 58(2) of the *Department of Employment and Social Development Act*, I am required to refuse permission if I am satisfied, "that the appeal has no reasonable chance of success."
[2] *Fancy v Canada (Attorney General)*, 2010 FCA 63.

## Issues

[7] The issues are as follows:

a) Is there an arguable case that the General Division applied case law that was irrelevant to her case?

b) Is there an arguable case that the General Division failed to apply the legal principle set out in *Y.P.*?[3]

c) Is there an arguable case that the General Division ignored some of the evidence?

## Analysis

[8] The Appeal Division must grant permission to appeal unless the appeal has no reasonable chance of success. A reasonable chance of success exists if there is a possible jurisdictional, procedural, legal, or certain type of factual error.[4]

[9] For factual errors, the General Division had to have based its decision on an error that was made in a perverse or capricious manner, or without regard for the evidence before it.

[10] Once an applicant gets permission from the Appeal Division, they move to the actual appeal. There, the Appeal Division decides whether the General Division made an error. If it decides that the General Division made an error, then it decides how to fix that error.

### Is there an arguable case that the General Division applied case law that was irrelevant to her case?

[11] The Claimant argues that the General Division made a legal error by applying case law that did not apply to the facts of her case. She notes that the General Division

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[3] See *Y.P. v Canada Employment Insurance Commission*, 2021 SST 364.
[4] See section 58(1) of the *Department of Employment and Social Development Act*. For factual errors, the General Division had to have based its decision on an error that was made in a perverse or capricious manner, or without regard for the evidence before it.

relied on *Simpson*,[5] when it wrote that, "the Federal Court of Appeal says a Tribunal need not refer to each and every piece of evidence before it, in its reasons".[6]

[12] From this, I understand that the Claimant is essentially arguing that the General Division should have considered some of the evidence that it did not. I will address this argument below, when I consider the Claimant's argument that the General Division overlooked some of the evidence.

[13] The general presumption applies, unless there is evidence that the General Division should have addressed. For instance, if the evidence could have changed the outcome, then the General Division should have addressed it.

## Is there an arguable case that the General Division failed to apply the legal principle set out in *Y.P.*?

[14] The Claimant argues that the General Division failed to apply the legal principle set out in *Y.P.* In that case, the General Division found that a claimant could show good cause for the delay if it was the result of receiving incorrect information from the Respondent, the Canada Employment Insurance Commission (Commission).[7]

[15] In other words, the Claimant suggests that, had the General Division accepted that she had received incorrect information from the Commission, then it would have determined that she had good cause for her delay.

[16] The Claimant has not specified which delay this involves. Even so, I do not see any evidence that the Claimant contacted Service Canada and relied on any incorrect advice from it.

[17] However, the Claimant stated that she checked Service Canada's website. Upon reading the website, she understood that she would not be eligible for regular benefits if she had been dismissed from her employment.[8] Her employer had filed a Record of

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[5] *Simpson v Canada (Attorney General)*, 2012 FCA 82 at para 10.
[6] See General Division decision, at para 14.
[7] See *Y.P.*, at para 60, referencing *Pirotte*, A-108-76.
[8] See Supplementary Record of Claim dated February 16, 2021, at GD 3-32

Employment (one of many) stating that the Claimant had been dismissed from her job. She claims that the Service Canada website misled her into thinking she could not apply for Employment Insurance regular benefits. She says this explains her delay in applying for regular benefits.

[18] The General Division acknowledged the Claimant's arguments that there was erroneous information on the Service Canada website and that she relied on this advice to her detriment.[9]

[19] In this case, the General Division found that it was unreasonable for the Claimant to have relied exclusively on the information on the website. The General Division wrote, "Nor can a claimant reasonably treat general information on the website as if it were personally provided to them by the Commission".[10]

[20] Indeed, the Courts have held that claimants cannot come to solely rely on the website.[11] In *Panariti*, the Court went so far as to note that the web page under the heading "Eligibility" stated that the information was a guideline, and that it encouraged claimants to apply for benefits so processing agents could determine eligibility.[12]

[21] The General Division also found that the Claimant had to take reasonably prompt steps to confirm her personal beliefs and any information obtained from other sources. The General Division found that the Claimant should have confirmed this by contacting the Commission. The General Division determined that this obligation involved a "duty of care that [was] both demanding and strict".[13]

[22] Given the case law, I am not satisfied that the Claimant has an arguable case on this point. The General Division applied the appropriate test by examining whether the

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[9] See General Division decision, at para 35.
[10] See General Division decision, at para 53. The General Division's statement is made in the context of the Claimant's claim for sickness benefits, but the same principle applies.
[11] See, for instance, *Mauchel v Canada (Attorney General)*, 2012 FCA 202.
[12] See *Panariti v Canada (Attorney General)*, 2021 FC 333.
[13] See General Division decision, at para 80, citing *M.R. v Canadian Employment Insurance Commission*, 2019 SST 1292.

Claimant had acted as a reasonable and prudent person would have acted in similar circumstances.

## Is there an arguable case that the General Division overlooked some of the evidence?

[23] The Claimant argues that the General Division failed to apply the law of causation. She characterizes the error as an error of law. But, at the root of her argument is her claim that the General Division overlooked important evidence.

### – The Claimant's sick note for the period from May 25, 2018 to July 31, 2018

[24] The Claimant argues that the General Division ignored the sick note covering the period from May 25, 2018 to July 31, 2018. The Claimant's doctor certified that she had been unable to work for medical reasons during this timeframe.[14]

[25] The Claimant argues that, if the General Division had considered the existence of this sick note, it would have recognized that the Respondent, the Canada Employment Insurance Commission, had ignored the sick note in the first place. She says that if the Commission had not ignored this sick note in the first place, she would have been able to continue filing biweekly online reports. And, she would have continued to receive an additional four weeks of sickness benefits, to the 15-week maximum.

[26] The Claimant says there is evidence that the Commission never considered the sick note. She points to an audio recording with an agent "Mike". She says the audio recording shows that the Commission confirmed that, because it never considered the sick note, she lost her entitlement to (sickness) benefits.

[27] The General Division acknowledged the Claimant's allegations.[15] The General Division noted that the Claimant stated that she had been unable to request further sickness benefits because she was shut out of the on-line reporting system. The

[14] Sick Note dated June 5, 2018, at GD 2-34.
[15] See General Division decision at para 11.

General Division noted that this reportedly occurred when her employer filed a record of employment stating that she had abandoned her job.

[28] The General Division also noted the Claimant's argument that the Commission had failed to consider the sick note she had submitted on June 5, 2018.[16] The sick note accompanied the Claimant's report covering the period from May 13, 2018 to May 9, 2018, and from May 20, 2018 to May 26, 2018.[17]

[29] The General Division dismissed the Claimant's assertions that the online reporting system shut out the Claimant, leaving her unable to file biweekly claims. The General Division found that the evidence simply did not support such a finding.

[30] The General Division was entitled to draw this conclusion and reject the Claimant's assertions. It noted the evidence upon which it made this finding.

[31] And, as the General Division noted, a claimant must submit a claim report (make a claim) for each week, in order to receive payment for sickness or regular benefits. Clearly, the General Division found that it was not enough that the Claimant provided a sick note. Citing section 49 of the *Employment Insurance Act*,[18] the General Division found that the Claimant had to file a report for each reporting period, even if she had already provided a sick note for that timeframe.

[32] Further, the General Division determined that, even if the Claimant had been unable to access the reporting system and to file reports, she did not take any timely steps to contact the Commission about her purported lack of access.[19]

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[16] See General Division decision at paras 11 and 35. The General Division referenced the Claimant's reply to GD01.
[17] Employment Insurance Report Record and Attestation, at GD 2-31 to GD 2-34.
[18] Section 49 of the *Employment Insurance Act* states that a person is not entitled to receive benefits for a week of unemployment until the person makes a claim for benefits for that week in accordance with section 50 and the *Employment Insurance Regulations*.
[19] See General Division decision, at para 25.

[33] The General Division concluded that the Commission had to have considered the medical certificate dated April 20, 2018,[20] along with the sick notes, including the one issued on June 5, 2018.[21]

[34] The General Division noted the existence of the sick note. The General Division described it at paragraph 65. The General Division wrote that the medical notes on the file show that the Claimant was unable to work during certain periods, including from May 25, 2018 to July 31, 2018.

[35] For these reasons, I am not satisfied that the General Division overlooked or ignored the existence of the sick note for the period from May 25, 2018 to July 31, 2018.

– **Paragraphs 68 and 69**

[36] The Claimant argues that the General Division contradicted itself at paragraphs 68 and 69. There, the General Division wrote that, if the Commission had failed to consider the sick note for the period from May 25, 2018 to July 31, 2018, it would have approved sickness benefits for only 13 weeks.

[37] The Claimant argues that this statement shows that the Commission failed to consider the sick note for the period from May 25, 2018 to July 31, 2018. Otherwise, she claims that the Commission would have approved her for sickness benefits after May 25, 2018.

[38] In fact, the General Division was explaining that the Commission would have approved the Claimant for only 13 weeks of sickness benefits, rather than the maximum of 15 weeks of sickness benefits, if it had not considered the sick note for the period from May 25, 2018 to July 31, 2018.

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[20] The General Division referred to the medical certificate as the first medical note, but the Claimant states that properly, it should be described as a medical certificate. See AD 1A-2.
[21] See General Division decision, at paras 66 and 67.

[39] In other words, the General Division determined that the only way the Commission could have approved 15 weeks of sickness benefits was if there was some medical evidence that showed the Claimant was unable to work for that length of time.

[40] Although the Commission had approved the Claimant for 15 weeks of sickness benefits,[22] she was still required to file biweekly reports. The fact that she had provided supporting medical information showing that she was unable to work up to July 31, 2018 did not exempt her from this requirement.

[41] I am not satisfied that there is an arguable case that the General Division contradicted itself at paragraphs 68 and 69, or that it even had a bearing on the outcome.

– **"My Latest Claim"**

[42] The Claimant argues that the General Division ignored the document at pages GD 2-45 to GD 2-46. The document, titled "My Latest Claim," shows that a total of 12 weeks of sickness benefits were paid and that the Commission last processed a report for the week of May 20, 2018 to May 26, 2018. The document also shows that the Claimant's recovery date was August 4, 2018.

[43] The Claimant argues that this is further evidence that the General Division ignored the sick note for the period from May 25, 2018 to July 31, 2018. But, simply because the document shows how many weeks were paid, or when the Commission last processed a report, in no way establishes that the General Division ignored the sick note.

[44] The Claimant says that the General Division ignored the fact that the recovery date of August 4, 2018 does not appear on any other documents. She argues that the evidence shows her recovery date was in fact July 31, 2018.[23] Yet, the General Division did not reconcile this discrepancy regarding the August 4, 2018 date. At paragraph 66, it

[22] See Commission's initial decision dated June 5, 2018, at GD 3-19.
[23] There is also evidence that suggests the Claimant's recovery date was August 31, 2018. See Supplementary Record of Claim dated January 20, 2021, at GD 3-29.

concluded that the recovery date was July 31, 2018, without any mention of the August 4, 2018 date.

[45] The General Division did not address the recovery date set out on the document "My Latest Claim". However, it would have been an error had the General Division adopted that date as the Claimant's recovery date, in light of the medical evidence.

[46] Nothing turns on the fact that the General Division did not refer to the recovery date set out on the document "My Latest Claim".[24] The General Division did not base its decision on when the Claimant recovered from her sickness. The General Division had to examine the reasons for the Claimant's delay and the date of her recovery was irrelevant to this consideration in this case.

– **Paragraph 72 and the audio recording**

[47] The Claimant argues that the General Division ignored portions of an audio file marked as GD19. The Claimant states that the Employment Insurance agent confirmed that the Commission should have considered the sick note from May 25, 2018 to July 31, 2018 in the decision-making process.[25]

[48] I am not satisfied that there is an arguable case that the General Division ignored portions of the audio file. The agent's statement that the sick note should have been a factor in the decision-making process is not determinative of the Claimant's entitlement to receive benefits. The agent's statement does not establish that the Claimant complied with the reporting requirements under sections 49 and 50 of the *Employment Insurance Act*.

[49] As I noted above, section 49 of the *Employment Insurance Act* states that a person is not entitled to receive benefits for a week of unemployment until a person

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[24] The recovery date is relevant to the issue of when the Claimant might have been able to convert her sickness claim to a claim for regular benefits. But, the General Division still had to address whether the Claimant had good cause for the delay in making a claim for benefits.
[25] See Claimant's submissions filed August 15, 2022, at AD 1A-8 to 9, referring to approximately 56:02 to 56:14 of the audio file at AD19.

makes a claim for benefits for that week in accordance with section 50 and the *Employment Insurance Regulations*.

[50] Indeed, the agent informed the Claimant that the existence of the sick note alone was insufficient. The agent also said he would have next looked to see whether there was an antedate request on file, when it might have been made, and why the reports stopped.[26] In other words, the agent was saying that a claimant also has to file biweekly reports.

## Conclusion

[51] I am not satisfied that the appeal has a reasonable chance of success. Even if the Commission or General Division had overlooked the sick note, ultimately the Claimant had not complied with the reporting requirements. The existence of the sick note on file did not fulfil the reporting requirements. The Claimant states that she was locked out of the reporting system, so was unable to file reports. But, as the General Division found, that simply was not borne out by the evidence.

[52] Permission to appeal is refused. This means that the appeal will not be going ahead.

Janet Lew
Member, Appeal Division

[26] At approx. 56:16 of the audio file at AD19.