



Citation: *HA v Canada Employment Insurance Commission*, 2023 SST 250

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: H. A.
Representative: N. K.

Respondent: Canada Employment Insurance Commission
Representative: Isabelle Thiffault

Decision under appeal: General Division decision dated November 30, 2022
(GE-22-3374)

Tribunal member: Stephen Bergen

Type of hearing: In Writing
Decision date: March 4, 2022
File number: AD-22-921

Decision

[1] I am dismissing the appeal of the General Division summary decision.

Overview

[2] H. A. is the Appellant. She tried to claim Employment Insurance (EI) benefits to look after her son (the Child),¹ so I will refer to her as the Claimant. The Respondent, the Canada Employment Insurance Commission (Commission) refused her benefits because she did not provide a Medical Certificate (Certificate) that confirmed that the Child's medical condition met the criteria for her to receive benefits. Its decision said that the Certificate did not indicate that the child was critically ill or injured.

[3] In response to the Commission's decision, the Claimant obtained an amended Certificate. She gave the Commission the amended Certificate and asked it to reconsider its decision. The new Certificate confirmed that there had been a significant change in the Child's baseline state of health and confirmed that he required the care of a family member. However, the amended Certificate maintained that the Child's life was not at risk as a result of his illness. As a result, the Commission would not change its decision.

[4] The Claimant appealed to the General Division, but the General Division dismissed her appeal without a hearing (Summary Dismissal). The General Division said that the appeal had no reasonable chance of success.²

[5] Before it summarily dismissed the Claimant's appeal, the General Division wrote her to explain what it was considering. It asked her to send in any information that might be relevant to the General Division's decision. The Claimant did not send in additional information or reply.

¹ The benefit to care for a critically ill child found at Section 23.2(1) of the *Employment Insurance Act*.

² See section 53(1) of the *Department of Employment and Social Development Act* (DESD Act), as it was prior to December 2022.

[6] The Claimant is now appealing the summary dismissal to the Appeal Division.

[7] I am dismissing the appeal. The Claimant has not shown how the General Division process was unfair, and she has not pointed to any other error made by the General Division.

Issue

[8] Did the General Division fail to follow procedural fairness?

Analysis

[9] For the Claimant to succeed in her appeal, she must show that the General Division made an error that fits within the “grounds of appeal.”

[10] 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.³

[11] The Claimant must show that the General Division made one or more of these errors.

Procedural fairness

[12] When the Claimant completed her Application to the Appeal Division, she selected the error concerned with procedural unfairness. As its name suggests, procedural fairness is about the fairness of the process.

[13] A party to an appeal may think that a General Division decision is unfair or that particular findings in the decision are unfair, but such concerns do not mean that the

³ This is a plain language version of the three grounds. The full text is in section 58(1) of the DESDA.

General Division hearing **process** was unfair. To establish that the General Division made a procedural fairness error, the Claimant must show that the General Division's hearing process was unfair in some way.

[14] Procedural fairness means ensuring that a party has a fair opportunity to be heard and to know the case against him or her. Fairness also requires an unbiased decision-maker.

[15] The Claimant was not specific about the procedural fairness error she thought the General Division had made. She did not suggest that the General Division member, or the Tribunal, did or said anything that affected her ability to be heard or know the case. She did not suggest that the member was biased or that she had prejudged the matter.

[16] It is true that the General Division did not offer the Claimant an oral hearing, but that is the nature of the summary hearing process; a process that is specifically authorized by law.⁴ The law says that the General Division may decide that a person appealing (appellant) does not have a reasonable chance of success. In such a case, it is authorized to dismiss the appeal without a hearing.

[17] However, the General Division must first notify the Claimant that it is considering a summary dismissal. It must give the Claimant a reasonable opportunity to respond to its notice before it proceeds.⁵

[18] In its November 2, 2022, notice to the Claimant, the General Division informed the Claimant that she did not appear to have a reasonable chance of success. The General Division gave the Claimant until November 21, 2022, to reply with any further information that she considered relevant to the appeal. This was the Claimant's opportunity to be heard.

[19] The General Division also gave the Claimant its reasons for believing that the Claimant may have no reasonable chance of success. In its notice, it explained that the

⁴ See Section 53(1) of the DESDA as it was prior to December 2022.

⁵ See section 22 of the *Social Security Regulations*.

medical form (the Certificate as amended) did not confirm that the Child's life was at risk. It informed the Claimant that this kind of certification was required by the law.⁶ It also told the Claimant that her appeal could not be successful without the mandatory medical documentation that meets the legal requirements (to establish a claim for the critically ill child benefit).

[20] By giving its reasons, the General Division disclosed "the case" that the Claimant must meet. In other words, it identified the problem with the Claimant's appeal and why it was considering dismissing the appeal without a hearing.

[21] The General Division met its fairness obligation to the Claimant by giving notice and supplying its reasons. The Claimant did not respond to the notice, or provide additional submissions, but that was her choice.

[22] On November 30, 2022, the General Division summarily dismissed the Claimant's appeal. The decision should not have surprised the Claimant. The General Division decision includes the member's reasons for dismissing the appeal. These reasons were substantially the same as the reasons it gave the Claimant in the earlier notice.

[23] I do not find that the General Division made any error of procedural fairness.

[24] In her Application to the Appeal Division, the Claimant talked about her son's surgery and recovery. She said that her son needed her, and she had to stay home to look after him. She talked about her disappointment with her doctor, who would not complete the Certificate in such a way that she could obtain the benefits she was seeking.

⁶ To be eligible for benefits, section 23.2(2) of the EI Act requires a certificate from a doctor that states that the child is a "critically ill child", and that the child requires the care and support of one or more family members.

Section 1(6) of the *Employment Insurance Regulations* defines "critically ill child" as a person under 18 years of age whose baseline state of health has significantly changed, whose life is at risk as a result of an illness or injury.

[25] I do not doubt that the Claimant could have used some form of income support during the time she stayed home with her son. I am sure this was difficult. However, it is not my role to re-evaluate or reweigh the evidence.⁷ I can only consider whether the General Division made an error under the grounds of appeal.

Conclusion

[26] I am dismissing the appeal. The General Division did not make an error that falls within the permitted grounds of appeal.

Stephen Bergen
Member, Appeal Division

⁷ See *Bergeron v. Canada (Attorney General)*, 2016 FC 220. See also *Hideq v. Canada (Attorney General)*, 2017 FC 439.