Citation: *DA v Canada Employment Insurance Commission*, 2023 SST 1021

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	D. A.
Representative:	M. W.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated June 22, 2023 (GE-23-1474)

Tribunal member:	Janet Lew
Decision date:	July 31, 2023
File number:	AD-23-650

Decision

[1] Leave (permission) to appeal is refused. The appeal will not be going ahead.

Overview

[2] The Applicant, D. A. (Claimant), is appealing the General Division decision. The General Division dismissed the Claimant's appeal. It found that she had already received 15 weeks of Employment Insurance sickness benefits. It determined that she had received the maximum number of weeks of sickness benefits to which she was entitled. In short, it found that she could not get more weeks of sickness benefits.

[3] The Claimant argues that the General Division failed to follow the rules of procedural fairness. She also argues that it made an error of law and an important error of fact. In particular, she says that the "decision is totally unfair"[1] as "new legislation is changed to 26 weeks."[2] It seems that the Claimant is saying that the General Division failed to consider or properly apply the law. She says that the General Division should have extended sickness benefits from 15 to 26 weeks.

[4] Before the Claimant can move ahead with her appeal, I have to decide whether the appeal has a reasonable chance of success. In other words, there has to be an arguable case.[3] If the appeal does not have a reasonable chance of success, this ends the matter.[4]

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

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[1] Application to the Appeal Division: Employment Insurance, at AD 1-3.
[2] Application to the Appeal Division: Employment Insurance, at AD 1-3.
[3] *Fancy v Canada (Attorney General)*, 2010 FCA 63.
[4] Under section 58(2) of the *Department of Employment and Social Development* (DESD) *Act,* I am required to refuse permission if I am satisfied "that the appeal has no reasonable chance of success."

Issue

[6] Is there an arguable case that the General Division made any procedural, legal, or factual mistakes?

I am not giving the Claimant permission to appeal

[7] The Appeal Division must grant permission to appeal unless the appeal does not have a reasonable chance of success. A reasonable chance of success exists if the General Division might have made a jurisdictional, procedural, legal, or certain type of factual error.[5]

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

Is there an arguable case that the General Division made any procedural errors?

[9] The Claimant argues that the General Division made a procedural error. However, she has not identified any procedural errors. For instance, she does not suggest that the General Division member (or Social Security Tribunal) failed to give her any documents or give her adequate notice, or that it somehow deprived her of any opportunity to fairly present her case. At most, she says that the General Division's decision is unfair. But disagreeing with the General Division decision is not evidence of any procedural errors. I am not satisfied that the appeal has a reasonable chance of success on this point.

Is there an arguable case that the General Division made any factual errors?

[10] The Claimant argues that the General Division made an important factual error. However, she has not identified any particular factual errors. In my own review of this matter, I see that the General Division's findings are consistent with the evidence that

[5] See section 58(1) of the DESD Act.

was before it. For instance, the General Division found that the Claimant had applied for Employment Insurance sickness benefits on December 16, 2022. The General Division referred to the Claimant's application for benefits. The application showed that the Claimant had applied for benefits on December 16, 2022. The General Division also did not overlook any important facts that could have affected the outcome.

[11] As the General Division's findings are consistent with the evidence before it, and it did not overlook any important facts, I am not satisfied that the appeal has a reasonable chance of success on this point.

Is there an arguable case that the General Division made any legal errors?

[12] The Claimant argues that the General Division made a legal error. Again, she has not identified any particular legal errors, but seems to suggest that the General Division misinterpreted the *Employment Insurance Act*. She suggests that amendments to the *Employment Insurance Act* extending the number of weeks of entitlement to sickness benefits applied to her. She claims that she should have received 26 weeks of benefits. After all, she continued to be unwell after 15 weeks.

[13] Section 12(3) of the *Employment Insurance Act* sets out the maximum number of weeks for which special benefits may be paid in a benefit period. In the case of a prescribed illness or injury, the maximum number of weeks was 15.

[14] The maximum number of weeks of benefits changed. Section 307(2) of the *Budget Implementation Act, 2021, No. 1*, changed the maximum number of weeks from 15 to 26 weeks. Chapter 23 of the *Statutes of Canada*, 2021, fixed December 18, 2022 as the day on which section 307(2) of the *Budget Implementation Act, 2021, No. 1*, came into force.[6]

[6] See Canada Gazette, Part II, Volume 156, Number 25.

[15] This means that the number of weeks of benefits a claimant could get depended on when their claim began:

- before December 18, 2022: up to 15 weeks
- on or after December 18, 2022: up to 26 weeks

[16] Here, the claim began before December 18, 2022. The Claimant filed a claim for benefits on December 16, 2022. So, she was entitled to receive up to 15 weeks of benefits.

[17] There might be questions as to why 26 weeks of benefits is not available to a claimant who has ongoing medical issues after December 18, 2022. The answer is found in section 12(1) of the *Employment Insurance Act*.

[18] Sections 12(1) and 12(3) have to be read together. Section 12(1) of the *Employment Insurance Act* states that, "If a benefit period has been established for a claimant, benefits may be paid to the claimant for each week of unemployment that falls in the benefit period, subject to the maximums established by this section."

[19] To find the applicable maximum—whether 15 or 26 weeks—section 12(1) says one has to look at when the benefit period is established.

[20] The Claimant's benefit period began on December 11, 2022, representing the Sunday of the week in which the initial claim for benefits was made.[7] Because the Claimant's benefit period began and was established by December 11, 2022, the applicable maximum was what was set out in subsection 12(3)(c) at that time. In this case, the maximum under subsection 12(3)(c) was 15 weeks.

[21] As the General Division determined, the increase in the maximum number of weeks of entitlement to sickness benefits was not available to the Claimant because it came into effect after her benefit period had started.

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[7] Section 10(1)(b) of the *Employment Insurance Act*.

[22] The General Division did not have any authority or discretion to grant the Claimant more than 15 weeks of sickness benefits.

[23] I am not satisfied that there is an arguable case that the General Division misinterpreted the *Employment Insurance Act* when it assessed the maximum weeks of benefits that the Claimant was entitled to receive. The General Division correctly assessed the maximum number of weeks of benefits that the Claimant could receive.

Conclusion

[24] I am not satisfied that the appeal has a reasonable chance of success. For that reason, permission to appeal is refused. This means that the appeal will not proceed.

Janet Lew
Member, Appeal Division