



Citation: *UB v Canada Employment Insurance Commission*, 2023 SST 1373

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: U. B.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated July 9, 2023
(GE-22-4006)

Tribunal member: Stephen Bergen

Decision date: October 10, 2023

File number: AD-23-732

Decision

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

Overview

[2] U. B. is the Applicant. He claimed Employment Insurance (EI) compassionate care benefits, so I will call him the Claimant. In March 2022, he claimed benefits for a period beginning in December 2017. In that period, he was on leave without pay and looking after his sick mother. When a claimant asks to receive benefits for a period earlier than the date of their application, this is called asking for an “antedate.”

[3] The Respondent, the Canada Employment Insurance Commission (Commission), refused his request to antedate. It said that he did not have a good reason for delaying his request for benefits. The Claimant asked the Commission to reconsider but it would not change its decision.

[4] The Claimant next appealed to the General Division of the Social Security Tribunal. The General Division found that he had a good reason for certain periods of the delay, but not for the delay from March 2019 to December 2019. As a result, it dismissed his appeal.

[5] The Claimant is now asking for leave to appeal the General Division decision to the Appeal Division.

[6] I am refusing leave to appeal. The Claimant has not shown how the General Division appeal process was unfair, and he has not identified how it made an important error of fact.

Issues

[7] Is there an arguable case that the General Division acted in a manner that was procedurally unfair?

[8] Is there an arguable case that the General Division made an important error of fact?

Analysis

General Principles

[9] For the Claimant's application for leave to appeal to succeed, his reasons for appealing would 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.

[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.¹

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

Procedural Fairness

[12] In his application to the Appeal Division, the Claimant selected the ground of appeal concerned with procedural fairness. However, he did not explain why he thought the General Division acted unfairly.

[13] Procedural fairness is concerned with the fairness of the process. It is not concerned with whether a party feels that the decision result is fair.

¹ This is a plain-language version of the grounds of appeal. The full text is in section 58(1) of the *Department of Employment and Social Development Act* (DESDA).

² See *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; and *Ingram v Canada (Attorney General)*, 2017 FC 259.

[14] Parties before the General Division have a right to certain procedural protections such as the right to be heard and to know the case against them, and the right to an unbiased decision-maker.

[15] The Claimant has not said that he did not have a fair chance to prepare for the hearing or that he did not know what was going on in the hearing. He has not said that the hearing did not give him a fair chance to present his case or to respond to the Commission's case. He has not complained that the General Division member was biased or that she had already prejudged the matter.

[16] When I read the decision and review the appeal record, I do not see that the General Division did anything, or failed to do anything, that causes me to question the fairness of the process.

[17] I appreciate that the Claimant disagrees with the appeal result and does not feel it is fair. However, it is not my job to review whether the decision result seems fair. I cannot re-weigh or re-evaluate the evidence to reach a different result.³

Important error of fact

[18] An important error of fact is where the General Division bases its decision on a mistaken finding that ignored or misunderstood relevant evidence, or a finding that does not follow from the evidence.⁴

[19] There is no arguable case that the General Division made an important error of fact.

[20] The law says that a claimant must have good cause for delay throughout the entire period of the delay.⁵ The Claimant delayed making an application for

³See for example: *Hideq v Canada (Attorney General)*, 2017 FC 439, *Parchment v Canada (Attorney General)*, 2017 FC 354, *Johnson v Canada (Attorney General)*, 2016 FC 1254, *Marcia v Canada (Attorney General)*, 2016 FC 1367.

⁴ This is a paraphrase. More precisely, section 58(1)(c) of the DESDA states that the General Division makes a (reviewable) error of fact when it has "based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it."

⁵ See section 10(4) of the Employment Insurance Act.

compassionate care benefits for about 51 months. The General Division found that the Claimant had good cause for most of that time, but not for the entire period. According to the General Division, the Claimant did not have good cause from March 2019 to December 2019. If that is correct, the earliest date to which the Claimant could have antedated his claim would have been December 2019, and the Claimant did not qualify for compassionate care benefits in December 2019.

[21] The Claimant did not explain why he thought the General Division made an important error of fact. He said he gave “additional reasons” (for why he did not apply earlier, presumably) in his hearing, and that the General Division did not consider those reasons. However, he did not identify the reasons that he thinks the General Division ignored.

[22] The General Division understood that the Claimant did not apply earlier because he did not know about compassionate care benefits. It understood his explanation that he did not look into his rights and obligations under the EI Act because he was dealing with various physical and mental health issues, as well as with some legal troubles. However, it found that there was a period between March 2019 and the end of December 2019 in which his physical and mental health issues did not prevent him from looking into compassionate care benefits. The General Division found that he was in Canada, able to work full time, and that he could manage his court case. It found that there were no extraordinary circumstances preventing him from looking into his entitlement during this period.

[23] The Claimant specified a number of the issues he feels interfered with this ability to investigate benefits. The General Division is not required to refer to each and every piece of evidence⁶ but it appeared to refer to the circumstances that were relevant.

[24] I note that the General Division appears to have made a mistake in one of the dates. The decision states that the Claimant contracted Covid-19 in December 2019.

⁶ See the decision in *Simpson v. Canada (Attorney General)*, 2012 FCA 82.

The Claimant's testimony, as well as the medical evidence on the file, confirms that he contracted Covid in December 2020.⁷

[25] When the General Division determined that the Claimant had good cause for the delay at certain times, but not others, it factored in the Claimant's Covid infection.⁸ However, its finding that he did not have good cause **throughout the entire period of the delay** was unaffected by the mistake.

[26] Had the General Division correctly understood that the Claimant did not become sick with Covid until December 2020, this could only have lengthened that part of the delay for which he could not show good cause. It could not possibly have changed the decision result.

[27] In other words, the decision is not "based on" the mistake. It is not an error of fact on which I might intervene.

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

Conclusion

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

Stephen Bergen
Member, Appeal Division

⁷ Listen to the audio recording of the General Division decision at 1:56:20. See also medical history in doctor report at GD9-17.

⁸ See para 32 of the General Division decision.