



Citation: *MS v Canada Employment Insurance Commission*, 2023 SST 1257

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: M. S.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated August 4, 2023
(GE-23-1098)

Tribunal member: Stephen Bergen

Decision date: November 15, 2023

File number: AD-23-805

Decision

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

Overview

[2] M. S. is the Applicant. I will call him the Claimant because he applied for Employment Insurance (EI) parental benefits. The Respondent, the Canada Employment Insurance Commission (Commission), told him on September 16, 2021, that the week ending May 22, 2021, was his last week of benefits. The Claimant understood he was entitled to an additional week of benefits, so he asked the Commission to reconsider. He did not ask the Commission to reconsider until February 14, 2023.

[3] The Commission would not reconsider because the Claimant's request was late. The Claimant appealed the Commission's decision to the General Division of the Social Security Tribunal, but the General Division dismissed his appeal.

[4] He is now asking the Appeal Division for leave to appeal the General Division decision.

[5] I am refusing leave to appeal. The Claimant has not made out an arguable case that the General Division made an important error of fact or acted unfairly.

Issues

[6] Did the General Division make an important error of fact by failing to consider that the Commission originally told the claimant that he would receive benefits until May 29, 2021.

[7] Did the General Division act unfairly by not seeking additional evidence to confirm the May 29, 2021, conversation?

Analysis

General Principles

[8] 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.

[9] 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

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

[11] The Claimant argues that the General Division made an error of fact. He asserts that a Commission representative told him on May 20, 2021, that his benefits would continue until May 29, 2021. He also says that he could have verified the call because he had it in his phone call log and could have obtained a copy of his call history from his cell service provider.

[12] I understand him to be arguing that the General Division made an error of fact by ignoring evidence about what the Commission had told him. I think he is also arguing that the General Division acted unfairly because it did not elicit or obtain additional

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.

evidence to confirm the early conversation with the Commission or give him the chance to do so.

Error of fact

[13] The General Division acknowledged the Claimant's evidence that the Commission had told him that he would get benefits to May 29, 2021, but this evidence did not factor into its analysis.

[14] However, there is no arguable case that the General division made an important error of fact.

[15] For an error of fact to be a ground of appeal, it must be an error on which the decision was based.³

[16] The General Division had to decide two things. First, it had to decide whether the Claimant's reconsideration request was late.

[17] It also had to decide whether the Commission exercised its discretion judicially when it refused an extension so that it could consider the Claimant's late request for reconsideration. The General Division correctly noted that this analysis required it to consider whether the Commission, in refusing to extend the time for the reconsideration,

- a) was acting in bad faith,
- b) had an improper purpose or motive,
- c) ignored a relevant factor or considered an irrelevant factor,
- d) acted in a discriminatory manner.

[18] The General Division's decision that the Commission had acted judicially depended on its assessment of these factors. Neither the General Division's decision, nor the Commission's decision that the reconsideration request was late, depended on

³ Section 58(1)(c) of the DESDA describes this error as one where the General Division, "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."

whether the Commission ever told the Claimant that he was entitled to benefits until May 29, 2021.

[19] The September 16, 2021, decision confirmed that the Claimant had exhausted his benefits and that he would not get the final week of benefits he expected. Regardless of any prior decision, the Claimant needed to address this decision if he wanted the Commission to change course. When the Commission finally confirmed that his benefits were exhausted on September 16, 2021, (and that he could ask for a reconsideration), he needed to request a reconsideration.

[20] It is understandable that a claimant might expect the Commission to give them the benefits it said they should get. It is also understandable that a claimant would believe that the Commission's initial statement about their entitlement could be relevant in a reconsideration or appeal of a later Commission decision that gave some lesser benefit amount.

[21] However, the appeal to the General Division was not an appeal of the decision to give him fewer benefits. It was an appeal of the Commission's decision to refuse to reconsider its decision, because the Claimant's request was late.

[22] There is no arguable case that the General Division **based its decision** on an error of fact by failing to consider what the Commission may or may not have told him in May 2021. What the Commission may have told him in May 2021 about his weeks of entitlement could not have helped the Claimant to prove that the Commission should have accepted his late reconsideration request. It was not relevant to whether the Commission exercised its discretion in a judicial manner, when it refused to consider the late reconsideration.

Procedural fairness error

[23] There is no arguable case that the General Division acted unfairly.

[24] Because evidence of the May 20, 2021, discussion was not relevant to the decision, it could not be unfair that the General Division did not pursue this evidence.

Even if the General Division had asked the Claimant more about what the Commission initially told the Claimant, or if it gave him additional time to obtain evidence about what the Commission said, this could not have helped the Claimant show that the Commission exercised its discretion improperly.

[25] The Claimant did not suggest any other basis for his appeal to the Appeal Division. At the same time, I appreciate that the Claimant is unrepresented. He may not have understood precisely what he should argue. Therefore, I searched the record for relevant evidence that the General Division may have ignored or misunderstood.⁴

[26] Unfortunately for the Claimant, the record does not support an argument that the General Division made an important error of fact.

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

Conclusion

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

Stephen Bergen
Member, Appeal Division

⁴ I am following the direction of the Federal Court in decision such as *Karadeolian v. Canada (Attorney General)*, 2016 FC 615.