



[TRANSLATION]

Citation: *MG v Canada Employment Insurance Commission*, 2024 SST 208

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant:	M. G.
Respondent:	Canada Employment Insurance Commission
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Decision under appeal:	General Division decision dated January 17, 2024 (GE-23-2856)
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Tribunal member:	Pierre Lafontaine
Decision date:	March 5, 2024
File number:	AD-24-117

Decision

[1] Permission to appeal is refused. The appeal will not proceed.

Overview

[2] The Applicant (Claimant) was denied regular benefits by the Respondent (Commission) because he was not available for work. The Commission based its decision on a medical certificate from the Claimant that said he was unfit for work due to incapacity for the period from October 24, 2022, to July 2023. The Claimant disputed the Commission's decision, but the Commission upheld its decision on reconsideration. He appealed to the Tribunal's General Division.

[3] The General Division found from the evidence that the Claimant was unable to work and available for work [*sic*] each day within the meaning of the law. It found that he was not available for work within the meaning of the law.

Issue

[4] The law specifies the only grounds of appeal of a General Division decision. These reviewable errors are the following:

1. The General Division hearing process was not fair in some way.
2. The General Division did not decide an issue it should have decided. Or, it decided something it did not have the power to decide.
3. The General Division based its decision on an important error of fact.
4. The General Division made an error of law when making its decision.

[5] An application for permission to appeal is a preliminary step to a hearing on the merits. It is an initial hurdle for the Claimant to meet, but it is lower than the one that must be met at the hearing of the appeal on the merits. At the permission to appeal stage, the Claimant does not have to prove his case but must establish that his appeal has a reasonable chance of success. In other words, he has to show that there is arguably a reviewable error based on which the appeal might succeed.

[6] I will give permission to appeal if I am satisfied that at least one of the Claimant's stated grounds of appeal gives the appeal a reasonable chance of success.

I am not giving the Claimant permission to appeal

[7] The Claimant argues that he was unemployed for a period of six months. He went back to work in June 2023. He argues that the medical certificate is wrong and unnecessary. He has already been declared entitled to regular benefits. He was available and capable of work each day. He submitted a list containing his job search efforts during the period in dispute.

[8] It is well established that I must consider only the evidence that was presented to the General Division in deciding this application. This is because an appeal to the Appeal Division is not a new opportunity to present evidence. The Appeal Division's powers are limited by the law.¹

[9] The evidence shows that the Claimant received Employment Insurance regular benefits from October 24, 2022. His employer's Record of Employment indicated a shortage of work. The Claimant renewed his claim for benefits in April 2023 by submitting a medical certificate. The certificate indicated that he was unable to work for the period from October 24, 2022, to July 2023.

[10] The Commission reassessed the file and converted the regular benefits to sickness benefits, resulting in an overpayment of \$3,738.

[11] Since the maximum number of weeks benefits can be paid under the law is 15 weeks, sickness benefits were paid retroactively from October 24, 2022, to February 6, 2023.

¹ See *Sibbald v Canada (Attorney General)*, 2022 FCA 157.

[12] The Claimant's April 4, 2023, medical certificate indicated that he had not been able to work since his September 2022 hospitalization, and that he was unfit for work due to incapacity for the period from October 24, 2022, to July 2023.

[13] Before the General Division, the Claimant was unable to explain why his doctor did not want to change his medical certificate if he was fit for work.

[14] In addition, the Claimant initially told the Commission that he had not made a job search.²

[15] From the evidence, the General Division found that the Claimant was unable to work during the period in dispute and that he had not made an active job search. It found that he was not capable of and available for work each day within the meaning of the law.

[16] In my view, the General Division correctly set out the applicable legal test for availability. It applied this test to the facts of the case and considered whether the Claimant was capable of and available for work.

[17] An appeal to the Appeal Division is not an opportunity for the Claimant to reargue his case and hope for a different outcome. I find that the Claimant has not raised any question of law, fact, or jurisdiction that could justify setting aside the decision under review.

[18] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for permission to appeal, I have no choice but to find that the appeal has no reasonable chance of success.

² See GD3-34.

Conclusion

[19] Permission to appeal is refused. This means that the appeal will not proceed.

Pierre Lafontaine
Member, Appeal Division