



Citation: *EN v Canada Employment Insurance Commission*, 2024 SST 177

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: E. N.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated December 22, 2023
(GE-23-3049)

Tribunal member: Stephen Bergen

Decision date: February 23, 2024

File number: AD-24-36

Decision

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

Overview

[2] E. N. is the Applicant. I will call him the Claimant because this application concerns his claim for Employment Insurance (EI) benefits. The Claimant received EI benefits but the Respondent, the Canada Employment Insurance Commission (Commission) investigated the circumstances of his claim after several months. It found that the Claimant accepted employment while he was on EI benefits and that he did not declare those earnings. As a result, it allocated those earnings to weeks in which the Claimant received benefits. The Commission also found that he left his employment without just cause. That meant that he became disqualified to receive EI benefits after he left his job.

[3] Because the Commission allocated earnings to weeks of benefits, it determined that the Claimant received too much in EI benefits during the time he was working. The Commission also determined that he should not have received any benefits after he quit his job. For both reasons, the Commission declared an overpayment of benefits.

[4] The Claimant asked the Commission to reconsider but it would not change its decision. When he appealed to the General Division of the Social Security Tribunal, the General Division dismissed his appeal. He is now asking for permission to appeal the General Division decision to the Appeal Division.

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

Issues

[6] Is there an arguable case that the General Division made an important error of fact by not considering the effects of his diagnosed depression?

Analysis

General Principles

[7] For the Claimant's application for leave to appeal to succeed, his reasons for appealing would have to fit within the "grounds of appeal." The grounds of appeal identify the kinds of errors that I can consider.

[8] 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

[9] 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. Other court decisions have equated a reasonable chance of success to an "arguable case."²

Important error of fact

[10] There is no arguable case that the General Division made an important error of fact by failing to consider the Claimant's depression as a psychological condition.

[11] An important error of fact is where the General Division **bases its decision** on a finding of fact that overlooks or misunderstands relevant evidence, or where its finding does not rationally follow from the evidence.³

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.

³ Section 58(1)(c) of the EI Act describes the error more precisely. It says that it is 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."

[12] There is no arguable case that how the General Division treated evidence of the Claimant's depression affected any finding on which the General Division based its decision.

[13] The General Division acknowledged that the Claimant was dealing with severe depression. The Claimant asserts that his depression is, or was, diagnosed, whereas the General Division described his depression as "undiagnosed," but that does not make a difference in this decision. The General Division accepted that the Claimant was credible when he said he was dealing with severe depression, so it took into account its effects, whether diagnosed or not.

[14] When the Commission reconsiders a decision at its own discretion, it must act "judicially." This means—among other things—that the Commission must consider all the relevant factors. It can only reconsider its decision after more than 36 months, where the decision is based on false or misleading statement or misrepresentation.

[15] The General Division found that the Claimant had made a false or misleading statement in relation to his claim for benefits. It said that neither the Claimant's mental health concerns nor his substance abuse can change the fact that he filed claim reports in which he did not report his earnings.

[16] The General Division reviewed whether the Commission had taken all the relevant factors into account. It found that the Claimant's severe depression, drug addiction, and other personal challenges, were not relevant to the reconsideration. In other words, the Commission did not need to take these factors into account when it decided to reconsider.

[17] The General Division did not say anything about the Claimant's depression when it considered whether he had just cause for leaving his job. However, the Claimant had admitted that he quit his job, which meant that it was up to the Claimant to prove that he had just cause for leaving. He admitted to the General Division that he could not remember why he quit, so he was not able to prove he had just cause. He did not assert

that he quit because of his depression, so the General Division did not need to refer to his depression or consider it when it found that he did not have just cause.

[18] Likewise, the General Division did not need to consider the Claimant's depression when it considered his earnings. His depression could not change the amount of earnings reported by his employer or how those earnings should be allocated.

[19] There is no arguable case that the General Division made an important error of fact by overlooking or misunderstanding the Claimant's depression. His appeal has no reasonable chance of success.

[20] I note that the General Division decided that it could consider the Claimant's penalty, even though the reconsideration decision did not explicitly mention the penalty. It did so because the Claimant's reconsideration request says that he made an "unintentional mistake." In its own words, the General Division took a "broad approach" to its jurisdiction.

[21] This is certainly a broad approach to jurisdiction, but the Claimant did not suggest that the General Division went too far. He did not raise this in his grounds of appeal or reasons for appealing to the Appeal Division. So, I do not need to consider whether there is an argument that the General Division overstepped its jurisdiction. I also note that the Commission did not impose any penalty on the Claimant and the General Division decision does not interfere with the Commission's decision to not impose a penalty.

Conclusion

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

Stephen Bergen
Member, Appeal Division