Citation: *GS v Canada Employment Insurance Commission*, 2024 SST 254

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	G. S.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated January 17, 2024 (GE-23-3238)

Tribunal member:	Stephen Bergen
Decision date:	March 12, 2024
File number:	AD-24-116

Decision

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

Overview

[2] G. S. is the Applicant. I will call her the Claimant because this application concerns her application for Employment Insurance (EI) benefits.

[3] The Claimant applied for compassionate care benefits. The Respondent, the Canada Employment Insurance Commission (Commission), told her that she did not qualify because she had not accumulated sufficient hours of insurable employment in her qualifying period. She needed 600 hours for special benefits (including compassionate care benefits) and had only 563 hours.

[4] When the Claimant asked the Respondent to reconsider, it would not change its decision. The Claimant appealed to the General Division of the Social Security Tribunal, but the General Division dismissed her appeal. Now she is 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.

Issue

[6] Is there an arguable case that the General Division ignored or misunderstood evidence related to the Claimant's reduced hours?

I am not giving the Claimant permission to appeal

General Principles

[7] For the Claimant's application for leave to appeal to succeed, her 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 the Claimant has 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]

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

[10] There is no arguable case that the General Division made an important error of fact by ignoring or misunderstanding evidence related to the Claimant's reduced hours.

[11] The Claimant agreed that she had only one employer within her qualifying period and that she had accumulated 563 hours. She argued that the Commission should have extended her qualifying period. She told the General Division that she had been under a lot of stress, which had caused her to reduce her hours within her regular qualifying period. She provided a medical note after the hearing which confirmed that she had been under stress and unable to work regularly since October 2022.

[12] The Claimant said that the General Division made an error of fact because it based its decisions on its own assumptions and misinformation. I take it that she means the General Division did not properly understand the evidence. The Claimant highlighted what she calls the main points of her appeal as follows:

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[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.

- She has never worked full-time for her employer.

- She did not initially report that she missed time because of medical conditions because she had not understood that anxiety, depression, and stress-related pain were medical conditions. She said she learned about this when she spoke to her doctor after her hearing.

- Other documents show that she was absent from work for three days and that she had given away shifts. However, she says that her employer does not ordinarily record when an employee gives away shifts or the reasons for doing so.

- The member did not consider the medical note evidence fairly.

[13] I will consider each of these arguments in turn.

– **Meaning of "error of fact" on the facts of this case**

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

[15] In this case, the Claimant did not dispute that she had only 563 insurable hours in her regular qualifying period. The only means by which she might qualify for benefits was through an extension of her qualifying period. Relevant evidence would be evidence that would help her to show that the Commission should have extended her qualifying period.

[16] The law says that a claimant's qualifying period can be extended under certain circumstances. If the Claimant had been unable to work due to illness for an entire week of her qualifying period, her qualifying period could be extended by a week. If she had

[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."

been unable to work for more than one entire week, her qualifying period would be extended for as many weeks as she was unable to work.[4]

[17] For each week the Claimant hoped to extend her qualifying period, she would have to identify a corresponding week within her regular qualifying period in which she did not work at all. The law does not offer an extension to offset shorter-than-usual shifts, or weeks in which a claimant did not work as many shifts as they would normally work.

[18] Therefore, "relevant evidence" would be evidence to establish that she did not work at all in certain weeks within her qualifying period, and evidence showing that her illness was the reason she did not work.

– **Claimant's part time status with employer**

[19] At one point, the General Division mentions that the Claimant, "wasn't able to work full-time because her daughter [was] still dependent on her." The Claimant suggests the General Division got the facts wrong. She says that she had never worked full-time for her employer.

[20] Some confusion is understandable. I listened to the recording of the General Division hearing, and it did not seem that English was the Claimant's first language. The Claimant testified that she did not go back to work "regularly part time" but she also agreed with the General Division member when he asked her to confirm her evidence. He said she had reduced her hours to part-time and she said, "Yes, *very* part-time."[5]

[21] Whatever the Claimant meant, there is no arguable case that the General Division made an error of fact. I say this because the General Division's finding that the Claimant could not extend her qualifying period did not depend on whether she was usually a full-time employee or only part-time.

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[4] See section 8(2) of the *Employment Insurance Act*.
[5] Listen to the audio recording of the General Division at timestamp 0:12:15 and 0:13:00.

[22] To have her qualifying period extended, the Claimant needed to prove that she lost an entire week of work (or entire weeks of work), and that she lost the week or weeks of work because of her illness.

[23] Relevant evidence would be evidence that she was unable to work throughout entire weeks within her qualifying period and that she was unable to work those weeks because of her illness.

[24] The General Division did not base its decision on a finding that ignored or misunderstood evidence supporting either of these facts.

– **Credibility of Claimant's evidence that she lost work due to illness**

[25] The Claimant argued that she did not report that she lost work due to illness because she did not understand that anxiety and depression, or her symptoms related to anxiety and depression, could be considered as "illness."

[26] There is no arguable case that the General Division made an error by ignoring the Claimant's explanation.

[27] The General Division found that she missed work so that she could care for her sick daughter. The Claimant told the General Division that she did not know that "illness" included anxiety and depression.

[28] The General Division did not accept that this was why she did not report that her illness caused her to miss work. It found that she missed work because of her daughter rather than her illness. It based this on the fact that the Claimant had many opportunities to explain that she had lost work due to illness, but that she had instead reported that she missed work because she had to care for her sick daughter. It also relied on evidence that the Claimant had continued working throughout the period of her employment during her qualifying period, with the exception of two (bi-weekly) pay periods.

[29] The Claimant did not point to any evidence that the General Division either ignored or misunderstood to find that the Claimant likely took time off to care for her daughter and not because of illness.

[30] The Claimant may disagree with how the General Division weighed the evidence or with its conclusion, but I do not have the power to re-weigh or re-evaluate the evidence to reach a different conclusion.[6]

– **The Claimant's difficulties in obtaining evidence**

[31] The Claimant argued that there were "two additional supporting documents" from her employer. She referred to letters from her HR manger and her supervisor to help prove that she was absent and that she gave away shifts.

[32] This is new evidence that was not available to the General Division. I cannot consider new evidence, even if thought that the General Division might have reached a different decision if it had that additional evidence.[7]

[33] Her arguments also suggest it had been difficult to obtain documentation to support her appeal because her employer did not collect or record that information.

[34] There is no arguable case that the General division made an error of fact by ignoring or misunderstanding how difficult it was for the Claimant to obtain evidence.

[35] The Claimant was responsible to bring to her appeal any evidence she thought might help her prove that she lost weeks of work due to her illness. If there were entire weeks in which the Claimant was not able to work, it is unfortunate that she was unable to obtain evidence that would establish the periods in which her illness prevented her from working.

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[6]See 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.
[7] *El Haddadi v. Canada (Attorney General*), 2016 FC 482; *Mette v. Canada (Attorney General*), 2016 FCA 276.

[36] However, the General Division cannot presume that the employer's records – if it had kept such records - would have supported the Claimant's assertion that she lost work (and not just some shifts – but entire weeks of work) because of her illness. The General Division can only make a decision based on the evidence that is before it.

– **Consideration of medical note**

[37] The Claimant argued that the General Division did not fairly consider the medical note.

[38] The Claimant did not offer any evidence that she had been diagnosed with either anxiety or depression. She submitted a medical note which said that she was under stress and had been unable to work regularly. Stress is not a medical condition or diagnosis. Even so, the doctor mentioned that the Claimant was unable to work regularly as a result, so he presumably accepted that it was affecting her physically or psychologically.

[39] In her submission to the Appeal Division, the Claimant provided some details of how the stress affected her and she listed a number of symptoms. However, her doctor's note did not explain how the Claimant's stress was affecting her and she did not describe these symptoms to either the Commission or to the General Division. That means that this is also new evidence that was not available to the General Division, so I will not be considering it.

[40] There is no arguable case that the General Division ignored or misunderstood the medical note evidence.

[41] Assuming the Claimant missed work because of a stress-related illness, the note was relevant to help establish that fact. The General Division apparently understood that it was relevant to this extent, and it considered it.

[42] However, it could not give the medical note much weight because of its lack of detail. The note did not specify or quantify when her illness affected her ability to work. The Claimant's experience of stress, or stress-related illness, may have caused her to

miss some hours or even some shifts at some point in her qualifying period. However, to have her qualifying period extended, she needed to establish specific weeks in which she could not work at all due to illness. The note did not confirm that the Claimant's stress-related illness caused her to miss any particular week within her qualifying period.

[43] The Claimant says that the medical note was not detailed because her employer would not have required more detail. However, the Claimant did not get the note to excuse herself from work. She asked for the note at the suggestion of the General Division member and for the specific purpose of her appeal.

[44] The member told the Claimant that the note needed to specify what she was going through at the time and how much time she was off work. [8] The member explained what the law says about extending the qualifying period for a prescribed illness, and said the note should explain when, within her qualifying period, she could not work because of illness.[9]

[45] Again, it is not for the Appeal Division to reweigh or reevaluate the evidence. The General Division member explained why the medical note did not persuade him that the Claimant's reported anxiety and depression prevented her from working. Its reasons are both transparent and intelligible.

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

Conclusion

[47] I am refusing permission to appeal. This means that the appeal will not proceed.

Stephen Bergen
Member, Appeal Division

[8] Listen to the audio recording of the General Division at timestamp 0:31:50.
[9] Listen to the audio recording of the General Division at timestamp 0:35:25.