



Citation: *RN v Canada Employment Insurance Commission*, 2024 SST 164

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: R. N.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated December 31, 2023
(GE-23-2718)

Tribunal member: Stephen Bergen

Decision date: February 21, 2024

File number: AD-24-87

Decision

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

Overview

[2] R. N. is the Applicant. I will call him the Claimant because his appeal concerns his claim for Employment Insurance (EI) benefits.

[3] The Claimant applied for EI sickness benefits in March 2022 and established a claim. Throughout the period in which he received sickness benefits, he filed claim reports in which he indicated that he had not worked or received any earnings.

[4] The Respondent, the Canada Employment Insurance Commission (Commission), investigated in early 2023. It discovered that the Claimant had been working and receiving earnings for most of the weeks he had collected sickness benefit.

[5] It found that the Claimant had knowingly made seven false representations and imposed a penalty of \$6590.00. It also gave the Claimant a notice of violation, which meant that he would have to work more weeks than is usually required for his next two claims, or for five years (whichever came first).

[6] The Claimant asked the Respondent to reconsider but it would not change its decision. Next, the Claimant appealed to the General Division of the Social Security Tribunal (Tribunal). The General Division dismissed his appeal, so he is asking the Appeal Division for leave to appeal.

[7] 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.

Preliminary matters

[8] In the Claimant's February 6, 2024, response to my letter, he included documents from an Ontario Social Benefits Tribunal action, a letter from the Ontario

workers' compensation board (WSIB), and a Functional Abilities Form—also from WSIB.¹

[9] I am not sure how these documents are relevant to the issue in this appeal, but none of these documents were available to the General Division. They are new evidence.

[10] The Appeal Division may only consider evidence that was before the General Division. With limited exceptions, the Appeal Division does not consider new evidence. The Claimant's new evidence does not fit within any of the possible exceptions.²

[11] I will not be considering any of this new evidence.

Issue

[12] Is there an arguable case that the General Division made an important error of fact when it found that the Claimant knowingly made false statements?

[13] Is there an arguable case that the General Division made an important error of fact when it evaluated the appropriate penalty or violation?

I am refusing leave to appeal to the Claimant

General Principles

[14] 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.

[15] 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).

¹ See AD1B.

² See *Marcia v Canada (Attorney General)*, 2016 FC 1367.

- 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.³

[16] 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.”⁴

The Claimant’s reasons for appealing

[17] In his application to the Appeal Division, the Claimant selected the ground of appeal that concerns an important error of fact. However, he did not explain how the General Division made an important error of fact.

[18] The Claimant did not point to any evidence that the General Division overlooked or misunderstood, and he did not try to show how any of the General Division’s findings are unsupported by evidence. He did not talk about how General Division found that he had made false statements. Nor did he talk about how the General Division reviewed his Notice of Violation or how it assessed any of the factors that affect the penalty amount.

[19] Instead, he asked that his debt be forgiven or reduced.

[20] I wrote the Claimant on February 2, 2024, to give him another opportunity to explain why he was appealing and how his reasons fit within the grounds of appeal. On February 6, a Navigator called him to go over the letter. The Claimant sent a short response the same day, but it did not address the penalty or violation issues. He questioned how he could get more hours to qualify for sickness benefits and mentioned that he was not covered by workers’ compensation benefits. He was asking for a link to

³ 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).

⁴ See *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; and *Ingram v Canada (Attorney General)*, 2017 FC 259.

an “appeal form.” He also provided a copy of his appeal of benefits to the Ontario Social Benefits Tribunal.

[21] I wrote the Claimant again on February 16, 2024, to give him one more chance to explain why he was appealing. He did not respond in writing but called the Tribunal on February 16, 2024, to say that he does not believe the General Division made an error.

[22] The Claimant also said that he himself made an error by “not asking [the Commission for] the qualifying hours for further Claims.”

Important error of fact

[23] I appreciate that the Claimant is unrepresented. He may not have understood precisely what he should argue.⁵ As a result, I have reviewed the record to see if the General Division may have ignored or misunderstood any evidence that could have given rise to an important error of fact.

[24] The General Division makes an important error of fact where it bases its decision on a finding that overlooks or misunderstands relevant evidence, or on a finding that does not follow rationally from the evidence.⁶

– False Statements

[25] There is no arguable case that the General Division made an important error of fact when it considered whether the Claimant knowingly made false statements.

[26] As the General Division noted, a claimant can know they are making a false statement without intending to defraud or deceive the Commission. The General Division said that the Claimant admitted to incorrect answers to clear questions about his work and earnings.

[27] The Claimant admitted that he had been working and receiving income during his benefit period and that he made seven misrepresentations in his claim reports. He told

⁵ I am following the direction of the Federal Court in decision such as *Karadeolian v. Canada (Attorney General)*, 2016 FC 615.

⁶ This is a paraphrase. An “important error of fact” is the error described in section 58(1)(c) of the DESDA.

the General Division that he made a mistake and that he was sorry, but that he needed the income. He explained that he was struggling with addiction issues, and supporting a disabled child.

[28] The Claimant has not suggested that the General Division was mistaken in finding that he knew his statements were false when he made them.

[29] The other circumstances, to which the Claimant referred, do not relieve him from the consequences of his false statements. However, they are relevant to the amount of the penalty.

– **Amount of penalty**

[30] There is no arguable case that the General Division made an important error of fact when it considered the amount of the Claimant's penalty.

[31] The Commission's penalty decision is a discretionary one. That means that the Commission is required to consider all the relevant factors. The General Division noted that the Commission considered a number of relevant factors including his support of a disabled child and that he was influenced by his drug use. However, the General Division said the Commission had not considered the Claimant's serious health problems. As a result, it reduced the penalty by an additional 30%.

[32] The Claimant did not identify evidence of any additional circumstances that was overlooked or misunderstood by the General Division.

– **Notice of violation**

[33] There is no arguable case that the general Division made an important error of fact when it considered the notice of violation.

[34] The notice of violation affects how many hours of insurable employment the Claimant will require for future claims.

[35] The Commission classified the Claimant's notice of violation as a "subsequent" violation. To evaluate whether the Commission properly concluded that

the Claimant's violation was a "subsequent violation," the General Division needed only to determine that the Claimant had a previous violation within 260 weeks.⁷

[36] The Commission said that the Claimant had previous notices of violation issued on October 14, 2022, and February 14, 2020, both within the previous 260 weeks. This is supported in the file evidence, and the Claimant did not dispute it.⁸

[37] Because his violation was subsequent and the unemployment rate in his region was less than 6%, the EI Act says that the Claimant must accumulate 1400 hours of insurable employment to re-qualify for benefits.⁹ However, the Commission uses its discretion to decide whether it will issue a notice of violation.

[38] The General Division found that the Commission exercised its discretion properly. It referred to records that the Commission considered all of the relevant factors. These included the Claimant's multiple health conditions, the fact that he supports a disabled child, and his ability to qualify for future claims and his prior violations. It also found that the Commission did not consider any irrelevant factors.¹⁰

[39] The Claimant has not identified any evidence the General Division misunderstood or failed to consider that is related to additional circumstances that could have further mitigated his violation.

[40] I appreciate that the Claimant admits his own mistake, and that he has many personal challenges in his life, including physical illness and financial pressures. However, both the General Division and the Appeal Division must apply the law as it is written. Neither has the power to make their decision out of compassion for the Claimant or sympathy for his difficult circumstances.

[41] Likewise, the Tribunal has no authority to forgive or write off any amount owing by the Claimant for an overpayment or a penalty.

⁷ See section 7.1(5) of the *Employment Insurance Act* (EI Act).

⁸ See GD3-73 to GD3-75.

⁹ See section 7.1(1) of the EI Act.

¹⁰ See GD3-99-100.

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

Conclusion

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

Stephen Bergen
Member, Appeal Division