



Citation: *RD v Canada Employment Insurance Commission*, 2023 SST 1651

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: R. D.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated August 2, 2023
(GE-23-1427)

Tribunal member: Pierre Lafontaine

Decision date: November 20, 2023

File number: AD-23-818

Decision

[1] Leave to appeal is refused. This means the appeal will not proceed.

Overview

[2] The Applicant (Claimant) established a claim for regular EI benefits on May 22, 2022. The Claimant was paid 15-weeks of EI sickness benefits from November 13, 2022, to February 11, 2023. He was notified that he couldn't be paid further EI sickness benefits after February 11, 2023.

[3] The Respondent (Commission) determined that the increase to 26 weeks of EI sickness benefits only came into effect on December 18, 2022. This means that anyone who started their EI benefits before December 18, 2022, is still bound by the old law, which allows for a maximum of 15 weeks of EI sickness benefits. The Claimant disagreed and appealed to the General Division.

[4] The General Division found that the Claimant was still covered by the old law. He was therefore entitled to a maximum of 15 weeks of EI sickness benefits. It dismissed the Claimant's appeal.

[5] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. In support of his application for permission to appeal, the Claimant submits that the new law which came into effect later in December 2022 should apply to him. He submits that he was receiving sickness benefits within the allowable time frame. The Claimant submits that he should be entitled to 26 weeks of sickness benefits and that he cannot be held responsible of errors in dates made by the Commission.

[6] I must decide whether there is some reviewable error of the General Division upon which the appeal might succeed.

[7] I am refusing leave to appeal because the Claimant's appeal has no reasonable chance of success.

Issue

[8] Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

Analysis

[9] Section 58(1) of the *Department of Employment and Social Development Act* specifies the only grounds of appeal of a General Division decision. These reviewable errors are that:

1. The General Division hearing process was not fair in some way.
2. 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.
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.

[10] An application for leave to appeal is a preliminary step to a hearing on the merits. The Claimant must meet this initial hurdle, but it is lower than the one of the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove his case but must establish that the appeal has a reasonable chance of success based on a reviewable error.

[11] In other words, I need to be satisfied that the reasons for appeal fall within any of the above-mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success in appeal, in order to grant leave.

Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

[12] The Claimant submits that the new law which came into effect later in December 2022 should apply to him. He submits that he was receiving sickness benefits within the allowable time frame. The Claimant submits that he should be entitled to 26 weeks of

sickness benefits and that he cannot be held responsible for the errors in dates of the Commission.

[13] The Claimant completed an application for EI benefits on May 24, 2022. An initial claim for regular benefits was established effective May 22, 2022.

[14] To be entitled to 26 weeks of sickness benefits, a benefit period must begin on or after December 18, 2022, the date of the change to the *Employment Insurance Act* (EI Act). In the present case, the Claimant's benefit period started May 22, 2022, and he started receiving sickness benefits on November 13, 2022, before the change to the law.¹

[15] Despite my sympathy for the Claimant, the EI Act does not allow the maximum period of sickness benefits to be extended, and does not grant the General Division, nor the Appeal Division, the power to grant an extension of this period, even for reasons of compassion.

[16] As stated by the General Division, the Tribunal must apply the law and does not have the authority to change the legislation. Only Parliament has the authority to change the current legislation.

[17] After reviewing the appeal file, the General Division decision, and the Claimant's arguments, I find that the General Division considered the evidence before it and properly applied the law in deciding that the Claimant was entitled to 15 weeks of sickness benefits.

[18] I have no choice but to find that the appeal has no reasonable chance of success.

¹ The law does not specifically or implicitly mention having a retroactive effect – *Gustavson Drilling (1964) Ltd v. Minister of National revenue*, (1977), 1 SCR, 271.

Conclusion

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

Pierre Lafontaine
Member, Appeal Division