



Citation: *TP v Canada Employment Insurance Commission*, 2024 SST 181

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: T. P.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated December 19, 2023
(GE-23-3107)

Tribunal member: Stephen Bergen

Decision date: February 26, 2024

File number: AD-24-18

Decision

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

Overview

[2] T. P. is the Applicant. I will call him the Claimant because this application concerns his claim for Employment Insurance (EI) benefits.

[3] The Claimant is a foreign student. He injured his back in a fall and required minor surgery and physiotherapy. The Claimant left Canada and went home for treatment. The Respondent, the Canada Employment Insurance Commission (Commission), said that he was not entitled to benefits while he was outside Canada. It also said that he knowingly made false representations that he was not outside of Canada. As a result, it imposed a penalty and issued a notice of violation.

[4] When the Claimant requested the Commission to reconsider, it would not change its decision that he was disentitled while he was outside of Canada, or that he had made false statements. However, it reversed its decision on the penalty and notice of violation.

[5] The Claimant appealed to the General Division of the Social Security Tribunal, but the General Division dismissed his claim. He is now asking for permission to appeal to the Appeal Division.

[6] I am refusing leave to appeal. The Claimant has not made out an arguable case that the General Division made an error of jurisdiction, or an important error of fact.

Issues

[7] Is there an arguable case that the General Division made an error of jurisdiction?

[8] Is there an arguable case that the General Division made an important error of fact?

I am not giving the Claimant permission to appeal

General Principles

[9] 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.

[10] 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

[11] 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

Error of Jurisdiction

[12] The Claimant selected error of jurisdiction when he completed his application to the Appeal Division, but the nature of his jurisdictional concern is unclear. When he explained why he was appealing, he talked about how he disagreed with what the General Division said about his discussions with the Commission.

[13] The question of jurisdiction is not concerned with whether the General Division looked at all the Claimant's evidence or considered all his arguments. The General Division's "jurisdiction" is defined by the issues that arise from the Commission's reconsideration decision. The General Division makes an error of jurisdiction when it

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.

fails to consider every issue in the reconsideration decision, or when it considers issues that are not found in the reconsideration decision.

[14] There is no arguable case that the General Division made an error of jurisdiction.

[15] The only issues in the reconsideration decision were whether the Claimant was disentitled to EI benefits while he was outside of Canada, and whether he had made false statements. The General Division discussed the issues with the Claimant and the Claimant agreed that he only wished it to consider his disentitlement.

[16] The General Division considered whether the Claimant was outside of Canada and whether his circumstances were such that he qualified for any exception to the general disentitlement. It did not consider any other issue.

Important error of fact

[17] I appreciate that the Claimant is unrepresented. He may not have understood precisely what he should argue. Therefore, I searched the record for relevant evidence that the General Division may have ignored or misunderstood.³ I was especially attentive to his reasons for seeking medical attention outside of Canada.

[18] The record does not support an argument that the General Division made an important error of fact.

[19] To be entitled to benefits outside of Canada, the Claimant needed to show that the treatment he was seeking was not readily or immediately available in Canada. The General Division noted that the Claimant acknowledged that the treatment was available in Canada. It found that he sought treatment outside of Canada because it was cheaper, and he had the support of his family.⁴

[20] As a result, the General Division found that the Claimant was not entitled to benefits while outside of Canada. It determined that his disentitlement should start

³ I am following the direction of the Federal Court in decision such as *Karadeolian v. Canada (Attorney General)*, 2016 FC 615.

⁴ See para 23 of the General Division decision.

January 10, 2021, which was the day he established his claim for sickness benefits (while he was outside Canada). It also found his disentitlement should end February 28, 2021, the last full day he was outside of Canada.

[21] The General Division's findings are consistent with what it heard from the Claimant. The Claimant testified that he left Canada on December 30, 2020, and returned on March 1, 2021. He said that he had surgery and physiotherapy, which he acknowledged would have also been available in Canada. He testified that he had sought treatment outside Canada because it was less expensive and because he would have the support of his family as he recovered.⁵ According to the Claimant, the cost of his surgery outside Canada would be \$2000.00 CDN plus another \$500.00 CDN for between 10 and 15 days of physiotherapy. He estimated that the same surgery in Canada would be \$4000.00, and that physiotherapy would add another \$1500.00 to the cost.

[22] The General Division found that the lower cost treatment and the support of his family were not circumstances which fall into the limited exceptions in the law. In his representations to the General Division, the Claimant seemed to agree that he did not meet the exceptions,⁶ but—in any event—he has not pointed to any evidence or law to suggest that the General Division's conclusion was in error.

[23] The Claimant maintains that he relied on information provided by the Commission when he left Canada for treatment. He asserts that the General Division rejected what he had to say about this because of the way the General Division questioned him, because he could not recall specifics after so long, and because of “lack of proper explanation vs the interpretation done” (which I understand to mean he did not have an interpreter).

[24] However, there is no arguable case that the General Division made an error in considering what the Commission told him.

⁵ Listen to the audio recording of the General Division decision at timestamp 0:20:30.

⁶ Listen to the audio recording of the General Division decision at timestamp 31:40.

[25] 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.⁷

[26] It does not matter why the General Division did not believe the Claimant when he said he was misinformed by the Commission. I say this because the General Division's findings on this question were not necessary to its decision. What the Commission may have told the Claimant is not relevant to whether he was entitled to receive benefits while he was outside Canada. As the General Division noted, the law says that "reliance on mistaken information received from a Commission agent does not entitle a claimant to benefits that they are not otherwise entitled to according to law."⁸

[27] The General Division could not ignore the law. It had no discretion to find the Claimant entitled to benefits, when he was outside of Canada without a reason that the law accepts.

[28] Therefore, the General Division did not make an important error of fact because it did not **base its** decision on its finding that the Commission did not misinform the Claimant.

Conclusion

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

Stephen Bergen
Member, Appeal Division

⁷ This is a paraphrase. An "important error of fact" is the error described in section 58(1)(c) of the DESDA.

⁸ See para 36 of the General Division decision.