



Citation: *BM v Canada Employment Insurance Commission*, 2024 SST 533

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: B. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated April 3, 2024
(GE-24-347)

Tribunal member: Stephen Bergen

Decision date: May 14, 2024

File number: AD-24-323

Decision

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

Overview

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

[3] The Claimant was laid off in mid-December 2022 and claimed regular benefits. He had surgery on April 7, 2023, while he was waiting to be called back to work. He continued to report that he was ready, willing, and capable of working.

[4] Near the end of his claim, the Claimant called the Commission to enquire if his claim weeks could be extended. He also told the Commission about his surgery to see if he could switch to sickness benefits. When the Commission learned about his surgery, it found that he had not been capable of work since April 2023. It decided that he was disentitled to benefits from April 7, 2023, to October 6, 2023, because he was not capable of and available for work.

[5] The Commission declared an overpayment of benefits. It also fined him \$5000.00 for making false statements, and imposed a notice of violation.

[6] The Claimant asked the Commission to reconsider, but it would not change its decision. He appealed to the General Division where he met with some success.

[7] The General Division found that the Claimant had been capable of working since April 7, 2023, which meant that he had not made false statements. It cancelled the fine and notice of violation. The General Division also found that it was reasonable for him to wait to be called back to work until May 31, 2023. It did not accept that he was available for work from that point on and upheld his disentitlement from June 1, 2023, to October 6, 2023.

[8] The Claimant asked the Appeal Division for permission to appeal the General Division decision.

[9] I am refusing permission to appeal. The Claimant does not have an arguable case that the General Division made an error of jurisdiction or an important error of fact.

Issues

[10] The issues are as follows:

- a) Is there an arguable case that the General Division made an error of jurisdiction?
- b) Is there an arguable case that the General Division made an important error of fact
 - (1) when it found that it was not reasonable for the Claimant to wait to be recalled for more than two months?
 - (2) by finding that he was not available after June 1, 2023, when he was networking with a friend?

I am not giving the Claimant permission to appeal

Error of Jurisdiction

[11] The Claimant selected “error of jurisdiction” as one of his grounds of appeal. However, he did not explain why he thought the General Division made an error of jurisdiction.

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

[13] An error of jurisdiction is where the General Division fails to make a decision that it is required to make, or where it makes a decision that it is not authorized to make. Its jurisdiction is defined by the issues in the reconsideration decision.¹ The General

¹ See section 113 of the *Employment Insurance Act* (EI Act).

Division is required to consider all the issues arising from the reconsideration decision but cannot decide any other issues.

[14] The reconsideration decision explicitly considered the following issues:

- The Claimant's availability for work from April 7, 2023, to October 6, 2023.
- What penalty is appropriate for the false statements.
- Whether he should receive a notice of violation.

[15] In addition, the reconsideration decision implicitly incorporated these additional issues:

- Whether the Claimant was incapable of work.
- Whether he knowingly made false statements about his capability.

[16] The General Division decision considered all these issues and did not improperly consider other issues.

Important error of fact

[17] To explain why he thought the General Division made an important error of fact, the Claimant stated that his employer had led him to believe there was work in the near future.

[18] He also pointed to paragraph 51 of the General Division decision. In paragraph 51, the General Division acknowledged that the Claimant "check[ed] in with his buddies at another employer." The Claimant argued that this shows he was actively looking for work.

[19] However, there is no arguable case that the General Division made an important error of fact.

[20] The General Division makes an “important error of fact” where it bases its decision on a finding of fact that ignores or misunderstands relevant evidence, or where a key finding does not follow logically from the available evidence.²

[21] I appreciate that the Claimant may disagree with the General Division’s findings. He may feel that the General Division should have agreed that it was reasonable for him to wait to be recalled for a longer period. He may also disagree with the General Division’s finding that his job search efforts, including his networking with his buddy, were insufficient. However, the General Division is the trier of fact. Whether it was reasonable for the Claimant to wait to be recalled, and how long he could wait, was a judgment call. So too was the sufficiency of his job efforts.

[22] I have no power to interfere with how the General Division weighed the evidence.³ I cannot interfere with the General Division because I might have evaluated the evidence differently and come to a different conclusion.

[23] The Claimant has not pointed to any relevant evidence that the General Division overlooked or misunderstood, and there was evidence before the General Division on which it could justify its conclusions.

[24] The Claimant’s appeal has no reasonable chance of success.

Conclusion

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

Stephen Bergen
Member, Appeal Division

² This is a paraphrase. The error of fact is described in section 58(1)(c) of the DESDA, which says that the General Division makes an error of fact where it has “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.”

³ 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.