



Citation: *TY v Canada Employment Insurance Commission*, 2024 SST 553

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: T. Y.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated March 20, 2024
(GE-23-3224)

Tribunal member: Janet Lew

Decision date: May 16, 2024

File number: AD-24-255

Decision

[1] Leave (permission) to appeal is refused. The appeal will not be going ahead.

Overview

[2] The Applicant, T. Y. (Claimant), is seeking leave to appeal two different General Division decisions. Both decisions deal with his claims for Employment Insurance sickness benefits. The Claimant has made multiple applications for benefits, dating to 2016 and 2018. He has outstanding concerns about these applications.

[3] This decision deals only with the sickness benefits that were paid under the Claimant's benefit period that started on February 13, 2022.¹ The Claimant had applied for sickness benefits on February 15, 2022.²

[4] The General Division determined that the Claimant got the maximum of 15 weeks of Employment Insurance sickness benefits for the benefit period starting on February 13, 2022. It determined that he was not entitled to get more weeks of sickness benefits under this benefit period.

[5] The Claimant argues that the General Division made jurisdictional, procedural, legal, and factual mistakes. He says that the General Division member was not independent. He says the member was not interested in seeing his evidence. At the same time, he says that there was no evidence to support the General Division decision. In particular, he says that there was no evidence that showed he actually got any sickness benefits.

[6] Before the Claimant can move ahead with the appeal, I have to decide whether the appeal has a reasonable chance of success. In other words, there has to be an

¹ I will deal with the sickness benefits that were paid under the Claimant's benefit period that started on May 16, 2021, in a separate decision, under file number AD-24-184 (General Division file number GE-23-3222). In that decision, I determined that the General Division had correctly determined that the Claimant had received 15 weeks of sickness benefits for the benefit period starting May 16, 2021. Payments were for the weeks from October 31, 2021, to February 6, 2022. Some of these payments were made in July 2022. The payments were confirmed by the Claimant's banking statements.

² See Claimant's application for sickness benefits, filed February 15, 2022, at GD 3-4 to 3-15.

arguable case.³ If the appeal does not have a reasonable chance of success, this ends the matter.⁴

[7] I am not satisfied that the appeal has a reasonable chance of success. Therefore, I am not giving permission to the Claimant to move ahead with the appeal.

Issues

[8] The issues are as follows:

- a) Is there an arguable case that the General Division member was biased?
- b) Is there an arguable case that the General Division failed to make sure that the process was fair?
- c) Is there an arguable case that the General Division made a legal mistake?
- d) Is there an arguable case that the General Division did not look at all of the facts?

I am not giving the Claimant permission to appeal

[9] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success. A reasonable chance of success exists if the General Division may have made a jurisdictional, procedural, legal, or a certain type of factual error.⁵

[10] For these types of factual errors, the General Division had to have based its decision on an error that it made in a perverse or capricious manner, or without regard for the evidence before it.⁶

³ See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

⁴ Under section 58(2) of the *Department of Employment and Social Development (DESD) Act*, I am required to refuse permission if I am satisfied “that the appeal has no reasonable chance of success.”

⁵ See section 58(1) of the *DESD Act*.

⁶ See section 58(1)(c) of the *DESD Act*.

The Claimant does not have an arguable case that the General Division member was biased

[11] The Claimant does not have an arguable case that the General Division member was biased against him. The General Division accepted the evidence of the Respondent, the Canada Employment Insurance Commission (Commission), over the Claimant's evidence. But that does not mean that it was biased or that it did not have any interest in seeing the Claimant's evidence.

[12] The Supreme Court of Canada set out the test for a reasonable apprehension of bias. It referred to Grandpré J.'s dissenting opinion in the case of *Committee for Justice and Liberty v National Energy Board*:

[T]hat test is "what would an informed person, viewing the matter realistically and practically—and having thought the matter through—conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly."⁷

[13] Merely speculating that the General Division was uninterested in his evidence does not meet the test set out by the Supreme Court of Canada. Without anything more, it is unlikely that an informed person would think that the General Division member would not decide fairly.

[14] As it is, the General Division clearly considered the Claimant's evidence. Indeed, before the General Division even held a hearing, it asked questions of the Commission, based on the Claimant's arguments and concerns. For instance, it wrote to the Commission for information on January 15, 2024,⁸ and again on March 7, 2024.⁹

[15] The General Division noted the Claimant's evidence in its decision. For instance, the General Division noted that the Claimant stated that the Commission had only paid him sickness benefits to March 5, 2022. The General Division also noted the Claimant's evidence that he had been in accidents in November 2021 and in November 2022. The

⁷ See *Committee for Justice and Liberty et al. v National Energy Board et al.*, 1976 CanLII 2 (SCC), [1978] 1 SCR 369.

⁸ See Tribunal's letter dated January 15, 2024, at GD 10.

⁹ See Tribunals' letter dated March 7, 2024, at GD 13.

General Division also noted that there was medical evidence to support the Claimant's applications for sickness benefits.

[16] Ultimately, the General Division accepted the Commission's arguments that it had paid 15 weeks of sickness benefits to the Claimant under the benefit period that started on February 15, 2022. But this was only after it examined the evidence and made sure that the evidence supported a finding that 15 weeks of sickness benefits had been paid to the Claimant.

[17] Other than saying the General Division was not interested in looking at his evidence, the Claimant does not have anything else to support his claim that the General Division member was biased.

[18] I am not satisfied that there is an arguable case that the General Division member was biased or that there was a reasonable apprehension of bias.

The Claimant does not have an arguable case that the General Division failed to make sure that the process was fair

[19] The Claimant does not have an arguable case that the General Division failed to make sure that the process was fair. The Claimant does not actually describe what might have been unfair. He does say that there was anything procedurally unfair or that he did not get a fair hearing. Indeed, nothing in the evidence suggests that there was a breach of procedural fairness.

[20] Under the rules of procedural fairness, an applicant has the right to know the case they have to meet, the right to answer that case, and the right to have their case considered fully and fairly by an impartial decision-maker.¹⁰ Here, there is nothing to suggest that the Claimant did not receive a fair hearing or the chance to fully present his case. And, as I have already indicated above, there is no reasonable apprehension of bias.

¹⁰ See *Palozzi v Canada (Attorney General)*, 2024 FCA 81 at para 9, citing *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69, [2019] F.C.R. 121 at para 41.

[21] I am not satisfied that there is an arguable case that the General Division failed to make sure that the process was fair.

The Claimant does not have an arguable case that the General Division made a legal mistake

[22] The Claimant argues that the General Division made a legal mistake. He says it was wrong for the General Division to say that being entitled to payment is the same as actually getting paid.

[23] The General Division did not actually say this. It checked to make sure that the Claimant received the sickness benefits that the Commission says it paid. The General Division found that the evidence showed that the Commission paid the sickness benefits to the Claimant, and that he therefore would have received those benefits.

[24] The Claimant still denies that he received 15 weeks of sickness benefits. So, I will examine this argument below.

[25] As for other possible legal errors, the Claimant does not suggest that an applicant can get more than 15 weeks of sickness benefits in a benefit period. Indeed, the *Employment Insurance Act* said that the maximum number of weeks for which benefits could be in paid in a benefit period because of a prescribed illness or injury was 15 weeks.¹¹ A claimant could not get more than 15 weeks of sickness benefits, even if they still were not able to work after 15 weeks.

[26] I am not satisfied that there is an arguable case that the General Division made a legal mistake.

The Claimant does not have an arguable case that the General Division did not look at all of the facts

[27] The Claimant argues that the General Division based its decision on factual mistakes. He says that the General Division did not look at all the facts. He says that the

¹¹ The *Employment Insurance Act* was amended to extend the number of weeks of sickness benefits available to a claimant. Claims with a start date of December 18, 2022, or later can get up to 26 weeks of sickness benefits. Before that date, a claimant was allowed up to 15 weeks of sickness benefits.

General Division made a mistake when it found that he received payment of 15 weeks of sickness benefits. He says he did not get any payments. He says there is no evidence that he ever received any payments.

[28] The Claimant points to the Commission's letter of August 11, 2023.¹² The Commission said that it paid 15 weeks of sickness benefits, starting the week of February 20, 2022. The Claimant says that there is no evidence to support the Commission's assertions that it had paid him the amounts and on the dates that it says it paid him.

[29] There was conflicting evidence before the General Division. On the one hand, the Commission said that it had paid sickness benefits to the Claimant for the benefit period starting on February 13, 2022. On the other hand, the Claimant denied that he ever received payment of sickness benefits for this benefit period.

[30] In the face of conflicting evidence, the General Division had to assess and weigh the evidence. It had to decide whose evidence it preferred.

[31] The General Division determined what evidence supported the Commission. The Commission had documented when it had paid the Claimant and how much it had paid to him. It also provided dates as to when the payments were processed or issued. The General Division pointed to the Commission's Pay History Details,¹³ as well as to the Commission's Attestation Certificate.¹⁴

[32] The Commission's documents were not helpful for the Claimant. He did not find that they showed or proved that he had been paid or that he had received any sickness benefits.

[33] But the General Division found that the Commission's evidence was very specific. The General Division found that the Commission was able to provide dates and amounts of payments of any sickness benefits. Because of this very specific

¹² See Commission's letter dated August 11, 2023, at GD 3-109.

¹³ See Pay History Details, at GD 3-117.

¹⁴ See Attestation Certificate, at GD 14-3.

information, it is clear that the General Division found that there was no reason why the Commission's evidence would not be reliable.

[34] The Claimant did not file any documents that supported his claims that he had not received any sickness benefits. He relied on his banking statements. He is not convinced that his banking statements show that he received any payments for Employment Insurance benefits. However, he did not file copies of his banking statements for the General Division to review.

[35] So, the General Division was entitled to prefer the evidence of the Commission, in light of the specific claims that it made about when and how much it had paid to the Claimant.

- The Claimant's banking statements show that he received Employment Insurance benefits

[36] The Claimant has since filed copies of his banking statements. He filed the banking statements with his Application to the Appeal Division. Usually, I would not look at new evidence that the General Division did not have. Generally, new evidence is not accepted at the Appeal Division (for Employment Insurance matters).

[37] However, new evidence can be accepted if both parties agree and accept the new evidence.¹⁵ This evidence came from the Claimant, so he no doubt wants to include this evidence. I have not asked the Commission whether it agrees to include this evidence, but I cannot see why it would object. This new evidence includes vital background information about what payments may have been made to the Claimant.

[38] The Claimant wants me to look at his banking statements. He says they prove that he never got any Employment Insurance benefits.

[39] Despite what the Claimant says, the banking statements in fact show that the Claimant received \$884 on November 28, 2022,¹⁶ and \$1,768 on January 3, 2023.¹⁷

¹⁵ See *Sibbald v Canada (Attorney General)*, 2022 FCA 157 at paras 38 and 39.

¹⁶ See banking statement, at AD 1-18.

¹⁷ See banking statement, at AD 1-16.

The deposits are both described as “EI Canada.” In other words, these deposits represent payments for Employment Insurance benefits.

[40] The banking statements do not describe whether the deposits are for regular or sickness benefits. There should be no dispute, however, that the benefits received for 2022 had to have been sickness benefits. The Claimant was injured and unable and unavailable for work after November 1, 2021. So, the benefits that were paid for 2022 could not have been regular benefits and had to have been sickness benefits.

[41] The deposits for the dollar amounts made on November 28, 2022, and January 3, 2023, match exactly what the Commission said it paid to the Claimant at that time.

[42] The banking statements show that payment of \$884 was deposited into the Claimant’s account on November 28, 2022. This amount represents two weeks of sickness benefits for the weeks of February 20 and 27, 2022 ($\$442 \times 2$).¹⁸ The Commission said that it issued benefits in this amount on November 24, 2022.

[43] The banking statements also show that payment of \$1,768 was deposited into the Claimant’s account on January 3, 2023. This amount represents four weeks of sickness benefits for the weeks of March 6, 2022, to March 27, 2022 ($\$442 \times 4$).¹⁹

[44] The General Division prepared a table showing the sickness benefits that were paid to the Claimant. The General Division prepared the table using the information from the Commission’s letter of August 11, 2023, the Pay History Details, and the Attestation Certificate.

[45] I have added some extra information to the General Division’s table (see table on next page). Hopefully, the table helps the Claimant. He can check the deposit date on his banking statements and compare them to the payments listed in the Commission’s letter of August 11, 2023.

¹⁸ See banking statement at AD 1-18.

¹⁹ See banking statement at AD 1-16.

Week	Date processed / when the Commission issued payments	Original week for which benefits were paid	Amended week for which benefits were paid	Benefit (\$)	Federal Tax deducted (\$)	Net payment (\$)	Deposit date from bank statement
0	24-Nov-22	Feb 13-22	13-Feb-22	0	0	0	--
1	24-Nov-22	20-Feb-22	20-Feb-22	473	31	442	28-Nov-22 ²⁰
2	24-Nov-22	27-Feb-22	27-Feb-22	473	31	442	28-Nov-22 ²¹
3	29-Dec -22	20-Nov-22	6-Mar-22	473	31	442	3-Jan-23 ²²
4	29-Dec 22	27-Nov-22	13-Mar-22	473	31	442	3-Jan-23 ²³
5	29-Dec 22	4-Dec-22	20-Mar-22	473	31	442	3-Jan-23 ²⁴
6	29-Dec 22	11-Dec-22	27-Mar-22	473	31	442	3-Jan-23 ²⁵
7	10-Jan-23	18-Dec-22	3-Apr-22	473	27	442	
8	10-Jan-23	25-Dec-22	10-Apr-22	473	27	442	
9	15-Jan-23	1-Jan-23	17 Apr-22	473	27	446	
10	15-Jan-23	8-Jan-23	24-Apr-22	473	27	446	
11	29-Jan-23	15-Jan-23	1-May-22	473	27	446	
12	29-Jan-23	22-Jan-23	8-May-22	473	27	446	
13	12-Feb-23	29-Jan-23	15-May-22	473	27	446	
14	27-Feb-23	5-Feb-23	22-May-22	473	27	446	
15	18-June-23	29-May-22	29-May-22	473	27	446	
	Total Net Payment					6,658	

²⁰ See banking statement, at AD 1-18.

²¹ See banking statement, at AD 1-18.

²² See banking statement, at AD 1-16.

²³ See banking statement, at AD 1-16.

²⁴ See banking statement, at AD 1-16.

²⁵ See banking statement, at AD 1-16.

[46] The Claimant did not produce banking statements for the period from January 10, 2022, to June 30, 2023. But the fact that what the Commission said about when and what it paid to the Claimant from November 28, 2022, to January 3, 2023 (without having seen the Claimant's banking statements) is pretty compelling evidence of the reliability of its documents.

[47] The Claimant has not produced any banking statements for January 10, 2022, to June 30, 2023. But if the Claimant has these statements, he can check them. He will likely see payments from "El Canada" about two to four business days after the Commission issued payments. For instance, when the Commission issued payment on January 10, 2023, he likely received a deposit sometime between January 12 and 15, 2023 from "El Canada," in the amount of \$884. This represents payment for the weeks of April 3 and 10, 2022.

[48] I am not satisfied that there is an arguable case that the General Division made an error when it found that the Commission paid sickness benefits to the Claimant for the benefit period that started on February 15, 2022. The evidence supported the General Division's findings.

Conclusion

[49] The appeal does not have a reasonable chance of success. Permission to appeal is refused. This means that the appeal will not be going ahead.

Janet Lew
Member, Appeal Division