



Citation: *TY v Canada Employment Insurance Commission*, 2024 SST 544

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

**Applicant:** T. Y.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated March 4, 2024  
(GE-23-3222)

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**Tribunal member:** Janet Lew

**Decision date:** May 16, 2024

**File number:** AD-24-184

## Decision

[1] Leave (permission) to appeal is refused. The appeal will not proceed.

## 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 May 16, 2021.<sup>1</sup>

[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 May 16, 2021. 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 did not follow the law. He also argues that the General Division made a lot of mistakes about the facts. He says the General Division failed to make sure that he got all of the benefits he should have received. For instance, he says he did not get any sickness benefits between March 5, 2022, to November 13, 2022, even though he had been injured in a November 2021 accident and still could not work.

[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

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<sup>1</sup> I will deal with the sickness benefits that were paid under the Claimant's benefit period that started on February 13, 2022, in a separate decision, under file number AD-24-225. This corresponds with General Division file number GE-23-3224.

arguable case.<sup>2</sup> If the appeal does not have a reasonable chance of success, this ends the matter.<sup>3</sup>

[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 did not follow the law; and
- b) 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.<sup>4</sup>

[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.<sup>5</sup>

## The Claimant does not have an arguable case that the General Division did not follow the law

[11] The Claimant argues that the General Division did not follow the law. He says the General Division should not have limited him to 15 weeks of sickness benefits. He says that when he was getting regular benefits, he was able to get 26 weeks. Plus, he was

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<sup>2</sup> See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

<sup>3</sup> 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.”

<sup>4</sup> See section 58(1) of the *DESD Act*.

<sup>5</sup> See section 58(1)(c) of the *DESD Act*.

still unwell and recovering from injuries from an accident even after 15 weeks had already passed.

[12] However, under the *Employment Insurance Act*, 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.<sup>6</sup> A claimant could not get more than 15 weeks of sickness benefits, even if they still were not able to work after 15 weeks.

[13] The Claimant's benefit period started on May 16, 2021. His benefit period was 52 weeks. So, he was limited to getting 15 weeks of sickness benefits for the 52-week period starting on May 16, 2021.

[14] The General Division correctly determined how many weeks of sickness benefits the Claimant could get within a benefit period. Therefore, I am not satisfied that there is an arguable case that the General Division did not follow the law.

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

[15] 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.

[16] To begin with, he says that the General Division overlooked the fact that the Respondent, the Canada Employment Insurance Commission (Commission), has yet to pay him any sickness benefits at all.

[17] On top of that, the Claimant argues that he should be getting more than just 15 weeks of sickness benefits. He says that he is entitled to get at least 15 weeks of sickness benefits for each accident that he had, or for as long as he has been unwell. He had accidents in November 2021 and November 2022. He says that he should not be limited to getting a total of 15 weeks of benefits for both accidents.

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<sup>6</sup> 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.

[18] The Claimant also says that, as he did not apply for sickness benefits until February 2022, he should not have received any sickness benefits before then. In other words, he says the Commission should not have converted any regular benefits he got between October 31, 2021, and February 12, 2022. He says they should have stayed as regular benefits, and sickness benefits should have started on February 15, 2022.

**- The General Division is presumed to have considered all of the evidence**

[19] The General Division did not address all of the evidence and facts in its decision. It did not have to address all of the evidence. It is presumed that a decision-maker considers all of the evidence. A decision-maker only has to address the evidence that is relevant, and which could be used to prove an issue.

[20] The Claimant included a lot of evidence in his appeal. However, not all of it, such as his Employment Insurance claims going back to 2016, was relevant. The General Division properly focused on the evidence that was relevant to the issues before it.

**- The Claimant reactivated an existing claim**

[21] The Claimant was injured in an accident on November 1, 2021. He did not apply for sickness benefits until February 15, 2022. So, he does not see why sickness benefits were paid retroactively to the week of October 31, 2021.

[22] The Commission explained how this came about. If a claimant were to start a new Employment Insurance claim within the last 52 weeks and there were weeks still payable on that claim, it would automatically reactivate (renew) the existing claim.<sup>7</sup>

[23] This is what happened in this case. The Claimant had an existing claim from May 2021.<sup>8</sup> When he applied for sickness benefits on February 15, 2022, it was within 52 weeks of his May 2021 claim. So, the Commission reactivated the existing claim. This enabled it to make retroactive payments to the week of October 21, 2021.

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<sup>7</sup> See Claimant's application filed February 15, 2022, at GD 3-7.

<sup>8</sup> See Claimant's application filed May 19, 2021, at GD 16-4 to 16-19.

**- The Claimant was not entitled to get regular benefits after November 1, 2021**

[24] Even though the Claimant did not apply for sickness benefits until February 15, 2022, he was not entitled to get regular benefits after October 31, 2021. He had been injured in an accident on November 1, 2021, and was unable and unavailable for work after that.

[25] After confirming that the Claimant got hurt in an accident on November 1, 2021, the Commission converted the regular benefits to sickness benefits for the weeks after October 31, 2021.

[26] Because the Claimant was hurt and could not work after November 1, 2021, he was not entitled to keep those benefits as regular benefits. So, unless the Commission converted them to sickness benefits, he would have had to repay those weeks of regular benefits.

**- Payment history of the sickness claim for the benefit period starting May 16, 2021**

[27] In its Representations to the General Division, the Commission said that it had already paid the Claimant the maximum 15 weeks of sickness benefits from October 31, 2021, to February 12, 2022. But the payment history of the claims is not that straightforward.

[28] The Commission paid nine of these weeks as regular benefits.<sup>9</sup> At the time, the Claimant reported that he was available for work for these nine weeks. But in June 2022, the Claimant asked for retroactive sickness benefits to October 2021.<sup>10</sup>

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<sup>9</sup> For the weeks of October 31, 2021, to December 26, 2021, the Claimant had been filing biweekly reports that he was available for work. So, he received regular benefits. The Commission told the Claimant on July 7, 2022, that he was not entitled to regular benefits because he had voluntarily left his employment on October 29, 2021, without just cause (See GD 3-35). It also issued him a Notice of Debt with an indefinite disqualification (See GD 3-53). Soon after that, the Claimant reminded the Commission that he had been in an accident on November 1, 2021, and unable to work since that date. The Commission reviewed the matter and lifted the disqualification. This removed the overpayment on the claim.

<sup>10</sup> See Supplementary Record of Claim, dated June 17, 2022, at GD 3-22.

[29] Once the Commission confirmed that the Claimant had been unable to work after his accident on November 1, 2021, it converted the regular benefits to sickness benefits. The Commission converted the benefits on July 15, 2022.

[30] The Commission issued the last six weeks of sickness benefits on July 15, 2022. (The Claimant received these benefits on July 19, 2022). This totalled 15 weeks.

**- The sickness benefits paid in July 2022 were for the weeks from January 9, 2022, to February 6, 2022**

[31] Although these sickness benefits were paid in July 2022 (including those weeks that were converted), these benefits were for the benefit period starting May 16, 2021. The payments that the Claimant got in July 2022 were sickness benefits for the weeks from January 2, 2022, to February 6, 2022.

[32] The sickness benefits that were issued in July 2022 are distinct from the sickness benefits established effective February 13, 2022, with a benefit period starting February 13, 2022. This decision does not deal with whether the Claimant received any sickness benefits under the February 13, 2022, claim.<sup>11</sup> I will deal with those separately in another decision.

**- The General Division made sure the Claimant got paid sickness benefits**

[33] The General Division reviewed the Claimant's banking records and the Commission's records<sup>12</sup> to make sure that the Claimant had been paid 15 weeks of sickness benefits for the benefit period starting May 16, 2021.

[34] The General Division helpfully prepared the following table showing when the sickness benefits were paid to the Claimant.

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<sup>11</sup> Just to provide some assurances to the Claimant, he was paid 15 weeks of sickness benefits under the claim starting February 13, 2022. He received payment of these sickness benefits in November 2022, January, February, and June 2023. See Appeal Division decision under file number AD-24-255.

<sup>12</sup> The Commission gave the Claimant a breakdown of payments in its letter of August 11, 2023, at GD 3-61 to 62. The Commission's history of payments for the claim is at GD 3-67 to GD 3-71. The Commission also prepared Itemized Statement of Benefits Paid for 2021 and 2022 (see GD 16-23 and 16-24).

**EI sickness benefits paid to the Claimant**

Weeks of Benefits	For the week of	Benefit Paid (\$)	Federal Tax Deducted (\$)	Net payment (\$)	Date payment processed by the Commission	Deposit date from Appellant's bank statement <sup>13</sup>
1	31-Oct-21	500	40	460	5-Nov-21	9-Nov-21
		66	0	66	13-Jan-22	17-Jan-22
2	7-Nov-21	500	40	460	19-Nov-21	23-Nov-21
		66	0	66	13-Jan-22	17-Jan-22
3	14-Nov-21	500	40	460	19-Nov-21	23-Nov-21
		66	0	66	13-Jan-22	17-Jan-22
4	21-Nov-21	500	40	460	6-Dec-21	08-Dec-21
		66	0	66	13-Jan-22	17-Jan-22
5	28-Nov-21	500	40	460	6-Dec-21	08-Dec-21
		66	0	66	13-Jan-22	17-Jan-22
6	5-Dec-21	500	40	460	17-Dec-21	21-Dec-21
		66	0	66	13-Jan-22	17-Jan-22
7	12-Dec-21	500	40	460	17-Dec-21	21-Dec-21
		66	0	66	13-Jan-22	17-Jan-22
8	19-Dec-21	500	*38	* 462	31-Dec-21	05-Jan-22
		66	0	66	13-Jan-22	17-Jan-22
9	26-Dec-21	500	*38	* 462	31-Dec-21	05-Jan-22
		66	0	66	13-Jan-22	17-Jan-22
10	2-Jan-22	566	53	513	15-Jul-22	19-Jul-22
11	9-Jan-22	566	53	513	15-Jul-22	19-Jul-22
12	16-Jan-22	566	53	513	15-Jul-22	19-Jul-22
13	23-Jan-22	566	53	513	15-Jul-22	19-Jul-22
14	30-Jan-22	566	53	513	15-Jul-22	19-Jul-22
15	6-Feb-22	566	53	513	15-Jul-22	19-Jul-22
Total net payments				6,896		

\*These figures have been corrected from the original table.

<sup>13</sup> The bank statements start on page GD 15-4.

[35] The Claimant's banking statements show that he received Employment Insurance benefits on October 13 and 26, 2021, in the amounts of \$920.<sup>14</sup> Each payment covered two weeks of benefits ( $\$460 \times 2$ ). The banking statements do not say whether these were regular or sickness benefits. It is understood that these were regular benefits because the Claimant's accident had not taken place yet.

[36] The banking statements also show that the Claimant received Employment Insurance benefits on November 9,<sup>15</sup> November 23,<sup>16</sup> December 8, and December 21, 2021,<sup>17</sup> in the amounts of \$920. Each payment covered two weeks of benefits ( $\$460 \times 2$ ). These payments have to be treated as sickness benefits because by then, the Claimant was unable and not available for work. He had been injured in an accident on November 1, 2021. So, he was not entitled to regular benefits.

[37] There is a minor discrepancy in the income taxes that were deducted for the weeks of December 19, 2021, and December 26, 2021.<sup>18</sup> It led to an additional \$2 in net payments for those two weeks. (I have corrected these errors in the table.) So, the net payment for those weeks was  $\$462 \times 2 = \$924$ . This is exactly what the bank statement shows. The Claimant got \$924 from the Commission on January 5, 2022.<sup>19</sup> Again, these payments have to be treated as sickness benefits.

[38] The banking statements also show that the Claimant received \$2,178 in Employment Insurance benefits on January 17, 2022. The Commission had recalculated the claim on January 13, 2022. This led to a change to the weekly benefit rate from \$500 to \$566, a \$66 difference.

[39] The Commission's letter of August 9, 2023, suggests that the Claimant should have received only \$594 ( $\$66 \times 9$  weeks) on January 17, 2022.<sup>20</sup> However, the payment history report shows that the Claimant received an additional \$66 for the weeks from

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<sup>14</sup> See banking statement at GD 15-4.

<sup>15</sup> See banking statement at GD 15-5.

<sup>16</sup> See banking statement at GD 15-6.

<sup>17</sup> See banking statement at GD 15-6.

<sup>18</sup> See Commission's letter dated August 11, 2023, at GD 3-61.

<sup>19</sup> See banking statement at GD 15-8.

<sup>20</sup> See Commission's letter dated August 11, 2023, at GD 3-61.

May 16, 2021, to December 19, 2021.<sup>21</sup> In other words, the weekly rate change went back to the week of May 16, 2021. So, this covered 33 weeks in total (\$66 x 33 = \$2,178).

[40] The Claimant did not receive sickness benefits under the renewal claim for several months. The Commission says that it decided to look at the file again in mid-July 2022. Until this happened, for some reason, the Commission did not accept that the Claimant was unwell and unable to work into January 2022. This is why it took until July 2022, to pay the Claimant sickness benefits for the weeks of January 2, 9, 16, 23, and 30, and February 6, 2022.

[41] The banking statements show that the Claimant did not get paid benefits again until July 19, 2022, when he received \$3,078.<sup>22</sup> The Commission said that it issued payments of sickness benefits for the weeks of January 2, 9, 16, 23, 30, and February 6, 2022 on July 15, 2022, so these figures match.

[42] The Commission's Itemized Statement of Benefits Paid also shows that the Commission issued payments in the amount of \$884 and \$1,768 in November 2022 and December 2022. These are unrelated to the benefit period starting May 16, 2021.<sup>23</sup>

#### - **Summary**

[43] The Claimant says the banking statements show that he did not get any sickness benefits. While it is true that the banking statements do not describe what the nature of the Employment Insurance payments are for, all of the evidence taken together show that these payments were sickness benefits, and that 15 weeks of sickness benefits were paid in the benefit period that started on May 16, 2021.

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<sup>21</sup> See GD 3-69 to 3-70.

<sup>22</sup> See banking statement at GD 15-18.

<sup>23</sup> See Commission's Itemized Statement of Benefits Paid for 2022 (see GD 16-24). These represent sickness benefits paid under the benefit period that started on February 13, 2022. See Appeal Division decision under file number AD-24-255.

[44] The General Division methodically reviewed the evidence before it. It made sure that what the Commission said it paid to the Claimant matched the Claimant's banking statements. The General Division explained some of the entries in the statements.<sup>24</sup>

[45] The General Division made two minor typographical errors. It recorded the wrong amount for the income tax deductions and hence, in the amount that the Claimant actually received as sickness benefits. But the difference was nominal. It does not change the fact that the Claimant received the maximum number of 15 weeks of sickness benefits within the benefit period that started on May 16, 2021.

[46] The General Division also explained why the payments for the weeks from October 31, 2021, up to the week of February 6, 2022, were sickness benefits, and not regular benefits. The General Division properly identified these as sickness benefits.

[47] I am not satisfied that there is an arguable case that the General Division did not look at all of the evidence.

## **Conclusion**

[48] 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

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<sup>24</sup> See General Division decision at para 20.