



Citation: *RC v Canada Employment Insurance Commission*, 2024 SST 724

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: R. C.
Representative: P. C.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated
May 16, 2024 (GE-24-1162)

Tribunal member: Glenn Betteridge

Decision date: June 25, 2024
File number: AD-24-412

Decision

[1] I am not giving R. C. permission to appeal. Her appeal won't go forward. This means the General Division decision stands unchanged.

Overview

[2] R. C. is the Claimant in this case. She applied for the Employment Insurance (EI) caregiver benefit so she could take care of her husband. He was recovering from knee replacement surgery.

[3] The Canada Employment Insurance Commission (Commission) denied her application. And it upheld its decision when she asked for a reconsideration.

[4] The General Division dismissed her appeal. It decided her husband wasn't critically ill or injured.¹ That's because the medical certificates didn't say his life was at risk.²

[5] The Claimant's appeal can only go forward if I give her permission to appeal.

[6] When deciding whether to give her permission, I reviewed the General Division appeal file.³ I read the General Division decision. And I read the Claimant's Appeal Division application.⁴

Issues

[7] I have to decide whether there is an arguable case the General Division made an important factual error.

¹ See section 23.3 of the *Employment Insurance Act* and section 1(7) of the *Employment Insurance Regulations*.

² The General Division reviews and weighs the medical certificates the Claimant submitted at paragraphs 11 to 28 of its decision.

³ See GD2, GD3, GD4.

⁴ See AD1.

I am not giving the Claimant permission to appeal

The test for permission to appeal

[8] I can give the Claimant permission to appeal if she can show there is an arguable case the General Division made one of the following errors:

- It used an unfair process or was biased.
- It didn't decide an issue it should have decided, or decided an issue it should not have decided.
- It based its decision on an important factual error.
- It made a legal error.⁵

[9] An arguable case means the same thing as a reasonable chance of success. This test is easy to meet.⁶

There isn't an arguable case the General Division made an important factual error, or any other error I can consider

[10] On her permission to appeal form, the Claimant checked the box that says the General Division made an important factual error.⁷ She included a separate page with reasons for the appeal. She sets out the circumstances that she and her husband faced during his recovery from surgery. She states that the Commission's decision "seems unjust" when considering the extent of her husband's reliance on her during that time.

⁵ These are the grounds of appeal in section 58(1) of the *Department of Employment and Social Development Act* (DESD Act). Section 58(2) of the DESD Act says that I have to give permission to appeal if the appeal has a reasonable chance of success. This is the same as having an "arguable case." See *O'Rourke v Canada (Attorney General)*, 2018 FC 498.

⁶ This legal test is described in cases like *Osaj v Canada (Attorney General)*, 2016 FC 115 at paragraph 12; and *Ingram v Canada (Attorney General)*, 2017 FC 259 at paragraph 16.

⁷ See AD1-3.

[11] Then the Claimant writes: “I respectfully request SST to reassess my application in light of the unavoidable circumstances I faced. Your reconsideration and approval would provide much-needed support during a challenging period for our family.”

[12] The General Division makes an important factual error if it bases its decision on a factual finding it made by ignoring or misunderstanding relevant evidence.⁸ In other words, if the evidence goes squarely against or doesn’t support a factual finding the General Division had to make to reach its decision. And the law also says I can presume the General Division reviewed all the evidence—it doesn’t have to refer to every piece of evidence.⁹

[13] The Claimant hasn’t identified a factual error she is saying the General Division made. Based on my review of the documents before the General Division, its decision is supported by the evidence, and it didn’t ignore any relevant evidence. So, the Claimant hasn’t shown there is an arguable case the General Division made an important factual error.

[14] The Claimant is represented by a family member in this appeal. So, I looked beyond her argument to see if there was an arguable case the General Division made any errors.¹⁰

[15] The General Division identified and decided the legal issues it had to decide. It correctly summarized and used the law it had to use. I didn’t find evidence that the General Division had to consider but instead ignored or misunderstood. The General Division gave more than adequate reasons for its decision. And nothing shows me there is an arguable case the General Division failed to give the Claimant a full and fair

⁸ Section 58(1)(c) of the DESD Act says it is a ground of appeal where the General Division based its decision on an erroneous finding of fact it made in a perverse or capricious manner or without regard for the material before it. I have described this ground of appeal using plain language, based on the words in the Act and the cases that have interpreted the Act.

⁹ See *Sibbald v Canada (Attorney General)*, 2022 FCA 157 at paragraph 46.

¹⁰ Where a self-represented claimant is asking for permission to appeal a General Division decision, I should not apply the permission to appeal test in a mechanistic manner. I take this to mean I should review the law, the evidence, and the decision from the General Division. See for example *Griffin v Canada (Attorney General)*, 2016 FC 874; *Karadeolian v Canada (Attorney General)*, 2016 FC 615; and *Joseph v Canada (Attorney General)*, 2017 FC 391.

opportunity to present her case. So, there isn't an arguable case the General Division made an error.

[16] When I look at the Claimant's appeal to the General Division and this appeal, she is arguing essentially the same thing.¹¹

[17] Unfortunately for the Claimant, an appeal to the Appeal Division isn't a new process from scratch—not a redo or a do-over of the General Division process.¹² The Appeal Division can't re-weigh the evidence before the General Division and come to a different decision.¹³ Disagreeing with the outcome (decision) the General Division reached isn't an error I can consider.¹⁴ And the law doesn't allow me to give her permission to appeal based on fairness or compassion for her and her family.

Conclusion

[18] The Claimant hasn't shown there is an arguable case the General Division made an error. In other words, her appeal doesn't have a reasonable chance of success.

[19] So, I am denying her permission to appeal. This means her appeal won't go forward and the General Division decision stands unchanged.

Glenn Betteridge
Member, Appeal Division

¹¹ See her appeal to the General Division at GD2-11 and GD2-12.

¹² See *Tracey v Canada (Attorney General)*, 2015 FC 1300. Where an appeal process lets a decision-maker review the law and the evidence and make a new decision, this is called a *de novo* appeal.

¹³ See *Bergeron v Canada (Attorney General)*, 2016 FC 220.

¹⁴ See *Quadir v Canada (Attorney General)*, 2018 FCA 21.