



Citation: *AG v Canada Employment Insurance Commission*, 2024 SST 1013

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: A. G.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated May 30, 2024
(GE-24-399)

Tribunal member: Melanie Petrunia

Decision date: August 25, 2024

File number: AD-24-422

Decision

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

Overview

[2] The Applicant, A. G. (Claimant), applied for and received employment insurance (EI) sickness benefits. When those benefits ended, she converted her claim to regular benefits and was paid regular benefits for 32 weeks.

[3] The Respondent, the Canada Employment Insurance Commission (Commission) later reviewed the Claimant's entitlement and decided that she had made false statements about being capable and available for work for the period that she received regular benefits. It determined that she was disentitled to the benefits that she received.

[4] The Claimant appealed this decision to the Tribunal's General Division. The General Division dismissed the appeal. It found that the Claimant hadn't shown that she was available for work for the period that she received regular benefits and that the Commission was acted judicially when it decided to reconsider its original decision.

[5] The Claimant is now asking to appeal the General Division decision to the Tribunal's Appeal Division. However, she needs permission for her appeal to move forward.

[6] I have to decide whether there is some reviewable error of the General Division on which the appeal might succeed. I am refusing leave to appeal because the Claimant's appeal has no reasonable chance of success.

Preliminary matters

– New evidence

[7] The Claimant provided a number of screenshots from her email with her application for leave to appeal in support of her efforts to find work.¹ These emails and screenshots do not appear to have been in evidence before the General Division.

[8] I am not able to consider new evidence at the Appeal Division. There are a few exemptions to this rule, but none apply here.² The courts have consistently said that the Appeal Division does not accept new evidence. An appeal is not a redo based on new evidence, but a review of the General Division decision based on the evidence it had before it.³

[9] I have not considered the supporting documents included with the application for leave to appeal.

Issue

[10] Does the Claimant raise any reviewable error of the General Division upon which the appeal might succeed?

I am not giving the Claimant permission to appeal

[11] The legal test that the Claimant needs to meet on an application for leave to appeal is a low one: Is there any arguable ground on which the appeal might succeed?⁴

[12] To decide this question, I focused on whether the General Division could have made one or more of the relevant errors (or grounds of appeal) listed in the Department of Employment and Social Development Act (DESD Act).⁵

¹ AD1B

² Although the context is somewhat different, the Appeal Division normally applies the exceptions to considering new evidence that the Federal Court of Appeal described in *Sharma v Canada (Attorney General)*, 2018 FCA 48 at paragraph 8.

³ See *Gittens v. Canada (Attorney General)*, 2019 FCA 256 at para 13.

⁴ This legal test is described in cases like *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12 and *Ingram v Canada (Attorney General)*, 2017 FC 259 at para 16.

⁵ DESD Act, s 58(2).

[13] An appeal is not a rehearing of the original claim. Instead, I must decide whether the General Division:

- a) failed to provide a fair process;
- b) failed to decide an issue that it should have, or decided an issue that it should not have;
- c) based its decision on an important factual error;⁶ or
- d) made an error in law.⁷

[14] Before the Claimant can move on to the next stage of the appeal, I have to be satisfied that there is a reasonable chance of success based on one or more of these grounds of appeal. A reasonable chance of success means that the Claimant could argue her case and possibly win. I should also be aware of other possible grounds of appeal not precisely identified by the Claimant.⁸

– **The General Division decision**

[15] The General Division first considered whether the Commission could go back and review the Claimant's entitlement. It noted that the factors that the Commission took into consideration and that it decided that the Claimant had made one or more false statement in her reports when she said she was available for work.⁹ The General Division also looked at the Commission's reconsideration policy and decided and that the Commission could reconsider the Claimant's availability for the period that she received regular benefits.¹⁰

⁶ The language of section 58(1)(c) actually says that the General Division will have erred if it bases its decision on a finding of fact that it makes in a perverse or capricious manner or without regard for the material before it. The Federal Court has defined perverse as "willfully going contrary to the evidence" and defined capricious as "marked or guided by caprice; given to changes of interest or attitude according to whim or fancies; not guided by steady judgment or intent" *Rahi v Canada (Minister of Citizenship and Immigration)* 2012 FC 319.

⁷ This paraphrases the grounds of appeal.

⁸ *Karadeolian v Canada (Attorney General)*, 2016 FC 615; *Joseph v Canada (Attorney General)*, 2017 FC 391.

⁹ General Division decision at paras 15 to 18.

¹⁰ General Division decision at paras 16 to 21.

[16] The Commission had decided that the Claimant was disentitled under both of the sections of the law that require claimants to show that they are available for work. The General Division considered these sections, looking first at whether the Claimant made reasonable and customary efforts to find a suitable job.

[17] The General Division looked at the Claimant's evidence of her job search efforts and considered the list of job search activities outlined in the EI Regulations. It found that the Claimant's efforts were not reasonable and customary.¹¹

[18] The General Division also looked at the three factors that a claimant has to prove to show that they are capable of and available for work but unable to find a suitable job:

- a) A desire to return to work as soon as a suitable job is available;
- b) Making efforts to find a suitable job; and
- c) Not setting personal conditions that unduly limit the chances of returning to work.¹²

[19] The General Division considered the Claimant's conduct and attitude when looking at each of these factors.¹³ It found that the Claimant did not have a desire to return to work as soon as she found a suitable job and did not make enough efforts to find work.¹⁴ It also found that she did not set personal conditions that limited her chances of returning to work.¹⁵

[20] The General Division found that the Claimant's health prevented her from returning to work. It cited a note from a nurse practitioner provided by the Claimant which extended her medical leave of absence until October 7, 2021, and directed that

¹¹ General Division decision at paras 27 to 39.

¹² General Division decision at para 57.

¹³ General Division decision at para 58.

¹⁴ General Division decision at para 59 and 63.

¹⁵ General Division decision at para 69.

she be reassessed before being medically cleared to return to work. There was no evidence that the Claimant was cleared by a medical professional to return to work.¹⁶

[21] In her application for leave to appeal, the Claimant says that she disagrees that she was not available for work. She struggles with the English language and sometimes says things that are contradictory to what she means. She restates that she was available for work.¹⁷

[22] The Claimant says that she has a recurrent arm injury that is getting worse as she ages. It effects her employment possibilities but doesn't mean that she isn't capable of working. The Claimant also provided the new evidence discussed above about her job search efforts.¹⁸

[23] I understand that the Claimant disagrees with the General Division decision, but I find that her arguments do not point to any possible reviewable errors by the General Division. The General Division considered the Claimant's arm injury but also noted that the Claimant was first placed on a medical leave due to complex medical issues, including severe stress and anxiety. This leave was later extended. Her job was available for her to return to in September 2021, but she did not return.¹⁹

[24] The Claimant was assessed by a nurse practitioner on September 8, 2021, and her medically directed leave of absence was extended to October 7, 2021.²⁰ As mentioned above, the note said that the Claimant would need to be assessed again to return to work.

[25] The General Division took all of the Claimant's evidence into consideration and applied the proper legal test. It is not the role of the Appeal Division to re-weigh the evidence to come to a different conclusion. I have not found any evidence that the General Division ignored or misinterpreted.

¹⁶ General Division decision at paras 42 to 55.

¹⁷ AD1-3

¹⁸ AD1-3

¹⁹ General Division decision at paras 45 to 55.

²⁰ General Division decision at para 47.

[26] Aside from the Claimant's arguments, I have also considered the grounds of appeal. The Claimant has not pointed to any procedural unfairness on the part of the General Division and I see no evidence of procedural unfairness. There is no arguable case that the General Division made an error of jurisdiction. I have not identified any errors of law and there is no arguable case that the General Division based its decision on an important mistake about the facts.

[27] The Claimant has not identified any errors of the General Division upon which the appeal might succeed. As a result, I am refusing leave to appeal.

Conclusion

[28] Permission to appeal is refused. This means that the appeal will not proceed.

Melanie Petrunia
Member, Appeal Division