



Citation: *JK v Canada Employment Insurance Commission*, 2025 SST 372

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: J. K.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated February 25, 2025
(GE-24-3810)

Tribunal member: Stephen Bergen

Decision date: April 14, 2025

File number: AD-25-222

Decision

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

Overview

[2] J. K. is the Applicant. I will call him the Claimant because this application is about his claim for Employment Insurance (EI) benefits. The Respondent is the Canada Employment Insurance Commission, which I will call the Commission.

[3] The Claimant's father required constant care after suffering a stroke in 2023. On September 8, 2023, the Commission approved him to receive 10 weeks of the Family Caregiver Benefits (FCB), starting on July 30, 2023. The Claimant looked after his father between July 30, 2023, and August 26, 2023, and between August 27, 2023, and October 14, 2023. He received FCB benefits for both periods.

[4] The Claimant applied for the FCB again in April 2024, to receive additional benefits starting March 24, 2024. The Commission refused benefits for the period starting March 24, 2024, and it then reviewed the basis for its earlier decision. The Commission decided to reconsider its earlier decision to pay the FCB for the period starting July 30, 2023, and it reconsidered FCB benefits from August 28, 2023, also. It decided that the Claimant did not qualify because his father's medical certificates did not suggest that his life was at risk.

[5] The Claimant asked the Commission to reconsider, but the Commission maintained its decision. He appealed to the General Division which considered whether the Commission acted judicially in reconsidering the FCB benefits it had paid.

[6] The General Division dismissed the appeal, so the Claimant is asking the Appeal Division for permission to appeal.

[7] I am refusing permission to appeal. The Claimant has not made an arguable case that the General Division made an error of procedural fairness.

Issue

[8] Is there an arguable case that the General Division made an error of procedural fairness?

I am not giving the Claimant permission to appeal

General legal principles for leave to appeal applications

[9] For the Claimant's application for leave to appeal to succeed, his reasons for appealing would have to fit within the "grounds of appeal." The grounds of appeal identify the kinds of errors that I can consider.

[10] I may consider only the following errors:

- a) The General Division hearing process was not fair in some way.
- b) The General Division did not decide an issue that it should have decided. Or, it decided something it did not have the power to decide (error of jurisdiction).
- c) The General Division based its decision on an important error of fact.
- d) The General Division made an error of law when making its decision.¹

[11] To grant this application for leave and permit the appeal process to move forward, I must find that there is a reasonable chance of success on one or more grounds of appeal. Other court decisions have equated a reasonable chance of success to an "arguable case."²

[12] The only ground of appeal the Claimant selected when he completed his application to the Appeal Division was the ground of appeal concerned with procedural fairness.

¹ This is a plain-language version of the grounds of appeal. The full text is in section 58(1) of the *Department of Employment and Social Development Act* (DESDA).

² See *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; and *Ingram v Canada (Attorney General)*, 2017 FC 259.

Procedural Fairness

[13] There is no arguable case that the General Division acted in a way that was procedurally unfair.

[14] Parties before the General Division have a right to certain procedural protections such as the right to be heard and to know the case against them, and the right to an unbiased decision-maker.

[15] The Claimant did not say that he did not have a fair chance to present his case at his hearing, or to respond to the Commission's case. He has not complained that the General Division member was biased or that she had already prejudged the matter.

[16] When I read the decision and review the appeal record, I do not see that the General Division did anything, or failed to do anything, that causes me to question the fairness of its process.

[17] I recognize that the Claimant disagrees with the General Division's findings and with its decision, so he may feel that the decision result treats him unfairly. He believes that he acted in good faith in his dealings with the Commission, and asserts that the decision places an undue burden on him. But procedural fairness is concerned with the fairness of the process. It is not concerned with whether a party feels that the decision result is fair.

[18] The Claimant also believes he was unfairly penalized when the Commission changed its mind. However, this has nothing to do with whether the General Division process was unfair. The only procedural fairness that I can consider, is the procedural fairness of the General Division process.

[19] I note that the Claimant's application materials plead for relief from repayment based on financial hardship. He asks that his debt be written off. The General Division correctly explained that it did not have the jurisdiction to consider such matters. I likewise have no jurisdiction to write off his debt.

[20] The General Division suggested how the Claimant might pursue a write-off.³ He may wish to explore those suggestions.

Other errors

[21] The Claimant's leave to appeal application indicated he was appealing based on an error of procedural fairness. However, many of his arguments concern the Commission's actions and how he believes those actions were unfair.

[22] The General Division reviewed the Commission's decision to reconsider. It found that the Commission had the authority to reconsider and that it used its discretion judicially.

[23] The General Division described how the Commission must act in order to act judicially. Among those requirements, are the requirements that the Commission act in good faith and without an improper purpose. So, I considered whether the Claimant might have intended an argument that the General Division made an error of law or fact when it found that the Commission acted judicially.

[24] However, there is nothing in the Claimant's application materials to identify what manner of legal error the General Division might have made, or to suggest that the Claimant even believes there was an error of law. There is no obvious error of law on the face of the decision.

[25] Likewise, the Claimant's application does not point to any piece of evidence that the General Division ignored or misunderstood, or that might be inconsistent with any of its findings or its conclusion that the Commission acted judicially.

[26] The Claimant's appeal has no reasonable chance of success. There is no arguable case that the General Division made an error of procedural fairness or any other kind of error.

³ See paras 40–41 of the General Division decision.

Conclusion

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

Stephen Bergen
Member, Appeal Division