



Citation: *CM v Canada Employment Insurance Commission*, 2025 SST 524

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: C. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated April 8, 2025
(GE-25-893)

Tribunal member: Janet Lew

Decision date: May 20, 2025

File number: AD-25-348

Decision

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

Overview

[2] The Applicant, C. M. (Claimant), is seeking leave to appeal the General Division decision.

[3] The General Division found that the Claimant had not shown good cause for the delay in applying for Employment Insurance benefits. The General Division found that she had not given an explanation that the law accepts. As a result, the General Division did not treat her application as if she had made it earlier.

[4] The Claimant argues that she had good cause for the delay in applying for benefits. She sustained numerous injuries from a motor vehicle accident, which left her with cognitive, psychological, emotional, and physical limitations. She claims that her limitations rendered her unable to manage even basic tasks, let alone make an application for benefits.

[5] The Claimant argues that the General Division made procedural, legal, and factual errors. In particular, she argues that the General Division member failed to provide any guidance, misapplied and failed to apply the law, and overlooked or misunderstood some of the evidence.

[6] Before the Claimant can move ahead with the appeal, I have to decide whether the appeal has a reasonable chance of success.¹ In other words, there has to be an arguable case. If the appeal does not have a reasonable chance of success, this ends the matter.²

¹ See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

² 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.”

[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 failed to provide the Claimant with some guidance?
- b) Is there an arguable case that the General Division misapplied or failed to apply the law?
- c) Is there an arguable case that the General Division based its decision on an important factual error that it made in a perverse or capricious manner or without regard for the evidence before it?

Analysis

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.³

[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.⁴

³ See section 58(1) of the DESD Act.

⁴ See section 58(1)(c) of the DESD Act.

The Claimant does not have an arguable case that the General Division was procedurally unfair

[11] The Claimant does not have an arguable case that the General Division was procedurally unfair.

[12] The Claimant argues that, as a self-represented claimant, the General Division was required to provide her with some guidance. In particular, she argues that the General Division should have advised her that she might benefit from having specific medical documents, such as formal cognitive assessments. That way, she says that she could have shown that her medical condition affected her capacity. She argues that these documents would have enabled her to prove that she had “good cause” for the delay. She argues that the lack of guidance from the General Division “hindered [her] ability to fully present [her] case and [that it] constitutes a breach of natural justice.”⁵

[13] The General Division must remain neutral and independent of the parties. If the General Division were to provide the type of guidance envisioned by the Claimant, it could well erode its role as an independent and impartial decision-maker.

[14] The General Division does not owe a duty to any parties to provide guidance on the nature of or the extent of evidence that is required to support or prove their respective cases. It is up to each of the parties to identify what evidence is required to prove their case, and to obtain and produce that evidence.

[15] Besides, the General Division could not have been expected to know what medical treatment the Claimant had and what records might have become available to her.

[16] Although the Claimant argues that she was disadvantaged without the additional medical evidence, it is clear that the General Division determined that medical records alone were not enough to prove her case.

⁵ See Claimant’s Request for Leave to Appeal, at AD1-5.

[17] The General Division accepted that the Claimant was injured and that it took several months to recover from her injuries. The General Division acknowledged the Claimant's complaints of cognitive and other issues. But at the same time, the General Division found that it had to look at the Claimant's activities and actions during the period of the delay.

[18] The General Division examined the Claimant's activities and actions, in addition to the medical evidence, to determine whether she had the capacity to apply for benefits during the entire period of the delay.

[19] Ultimately, the General Division concluded that, based on the medical records and the Claimant's activities and actions (even if she was doing activities with help from others), she had some measure of capacity to apply for benefits during the period of delay.

[20] All in all, I do not see any evidence that the General Division hindered the Claimant's ability to present her case. The General Division provided her with the opportunity to choose how the appeal proceeded, to file any documents and arguments to support her case, and to make oral submissions. The General Division identified the issues and also outlined the test that the Claimant had to meet.⁶ This would have allowed the Claimant to know what evidence she had to get to support her case.

[21] I am not satisfied that there is an arguable case that the General Division was procedurally unfair.

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

[22] The Claimant does not have an arguable case that the General Division made a legal error.

⁶ At approximately 7:50 and 9:40 to 10:16 of the audio recording of the General Division hearing.

- **The legal test for “good cause”**

[23] The Claimant suggests that the General Division identified the wrong legal test and then misapplied the legal test for “good cause” under section 10(4) of the *Employment Insurance Act*. She argues that the General Division incorrectly concluded that her ability to complete university courses (even with help) meant that she was also capable of applying for benefits. She argues that the General Division’s conclusion,

disregards the established legal requirement to assess what a “reasonable and prudent person” would do given the claimant’s actual circumstances, as confirmed by *Canada (AG) v. Kaler*, 2011 FCA 266 and *Canada (AG) v. Somwaru*, 2010 FCA 336.⁷

[24] In fact, the General Division noted that for a claimant to show good cause, they had to prove that they acted as a reasonable and prudent person would have acted in similar circumstances. In other words, they would have to show that they acted reasonably and carefully, just as anyone else would have if they were in a similar situation.

[25] The General Division relied on the same legal authorities cited by the Claimant, including *Somwaru*.⁸ In that case, the Federal Court of Appeal held that, barring exceptional circumstances, a claimant is expected to take reasonably prompt steps to understand their obligations under the *Employment Insurance Act*.

[26] The General Division also relied on *Burke*.⁹ In that case, the Federal Court of Appeal also held that a claimant has to show that they acted as a reasonable and prudent person would have acted in similar circumstances throughout the entire period of the delay.

⁷ See Claimant’s Request for Leave to Appeal, at AD1-4.

⁸ See General Division decision at para 10.

⁹ See *Canada (Attorney General) v Burke*, 2012 FCA 139.

[27] The General Division then applied this very test and considered whether the Claimant had acted as a reasonable and prudent person would have acted in similar circumstances throughout the entire period of the delay.

[28] I am not satisfied that there is an arguable case that the General Division identified the wrong legal test and then misapplied the legal test for “good cause.” The General Division considered whether the Claimant had acted as a reasonable and prudent person would have acted in similar circumstances.

- **Exceptional circumstances**

[29] The Claimant also argues that the General Division failed to evaluate whether her situation amounted to exceptional circumstances. She notes that there was medical and testimonial evidence of cognitive and psychological limitations caused by a serious accident.

[30] In fact, the General Division noted that it also had to consider whether there were any exceptional circumstances. It examined the Claimant’s circumstances to assess whether they qualified as exceptional circumstances. Ultimately, the General Division concluded that the evidence did not show that there were any exceptional circumstances in the Claimant’s case that would have excused her from having to act like a reasonable and prudent person.¹⁰

- **Application of the law**

[31] Essentially, the Claimant is arguing that the General Division came to the wrong conclusion based on the evidence before it. She argues that the evidence shows that, based on her circumstances which she says are exceptional, she acted as a reasonable and prudent person. In other words, she is arguing that the General Division failed to assess the evidence properly. She is asking for a reassessment of her case.

¹⁰ See General Division decision at para 12.

[32] However, as the Federal Court of Appeal held in *Quadir*,¹¹ disagreeing with the application of settled principles to the facts of a case does not give the Appeal Division grounds to intervene. After all, the application of settled principles to the facts is a question of mixed fact and law, and not an error of law. The Federal Court of Appeal made it clear that the Appeal Division has no jurisdiction to interfere in such cases unless an error of mixed fact and law discloses an extricable legal issue.¹² In other words, there has to be a distinct legal error that can be sorted from the facts. That is not the case here, as there is no extricable legal error.

[33] I am not satisfied that there is an arguable case that the General Division made a legal error by either misapplying the legal test for “good cause” or failing to evaluate whether her situation amounted to exceptional circumstances.

The Claimant does not have an arguable case that the General Division made a factual error

[34] The Claimant does not have an arguable case that the General Division based its decision on a factual error that it made in a perverse or capricious manner or without regard for the material before it.

[35] The Claimant argues that the General Division overlooked and misunderstood some of the evidence:

- a) That she returned to work and was able to function, without recognizing that her symptoms worsened after her accident. She testified that she developed vomiting and experienced other debilitating symptoms,
- b) That her doctor stated that she needed at least six months to recover from her injuries, and likely longer, considering the effects of her injuries and the stressful nature of her environment,

¹¹ See *Quadir v Canada (Attorney General)*, 2018 FCA 21.

¹² See *Garvey v Canada (Attorney General)*, 2018 FCA 118 at para 9.

- c) That the support she had in completing university courses was equivalent to the support she needed to navigate the Employment Insurance system and financial matters. The Claimant's husband helped with editing and comprehension of academic materials, but did not help her with financial administration or legal processes. She says that these two are not comparable, and
- d) That it overlooked her evidence about what she purportedly told the Respondent, the Canada Employment Insurance Commission (Commission).

- The Claimant's medical state

[36] The General Division did not mention anything about the Claimant vomiting or mention any specific symptoms that she experienced.

[37] It is well established in law that a decision-maker need not refer to all of the evidence. It is presumed that a decision-maker considers all of the evidence: *Simpson*.¹³ This presumption can be rebutted, as long as an applicant can show that the evidence was of such importance that it should have been considered, such that it would have proved the fact that the applicant claims that it does.

[38] In this case, the Claimant does not show why that information was of such significance that the General Division should have specifically addressed it. As it was, the General Division acknowledged that the Claimant had cognitive issues, and that she was experiencing other medical issues, including mental distress.

[39] However, the General Division found that neither the medical evidence nor the Claimant's own activities and actions showed that she lacked the capacity to apply for benefits during the entire period of the delay, even with a deterioration in symptoms. As I noted above, the General Division determined that the Claimant's medical state alone was not determinative as to whether she had good cause for her delay. So, the fact that the Claimant's condition deteriorated and that she was vomiting were details that the

¹³ See *Simpson v Canada (Attorney General)*, 2012 FCA 82.

General Division determined were not critical to nor conclusive of the outcome. The General Division focussed on the Claimant's activities and her actions, to assess whether they supported her claim of incapacity.

[40] I am not satisfied that there is an arguable case on this point.

- **The Claimant's recovery**

[41] The Claimant argues that the General Division misunderstood or overlooked the evidence regarding her recovery. The Claimant states that she needed at least six months to recover from her injuries.

[42] The General Division did not overlook the Claimant's evidence regarding her recovery. The General Division noted the Claimant's evidence that she would need several months to recover from her injuries.¹⁴ The General Division accepted this evidence.

[43] The General Division also accepted that the Claimant's recovery was delayed, due to ongoing mental stress from returning to work, having to face a lengthy commute, dealing with a toxic work environment, and not completing physiotherapy and chiropractic treatments.¹⁵

[44] I am not satisfied that there is an arguable case on this point as the General Division's findings about the Claimant's recovery from her injuries are consistent with the evidence before it. The Claimant has not shown where or how the General Division misunderstood or overlooked the evidence regarding her recovery.

- **Completing university courses**

[45] The Claimant argues that the General Division made a factual error in assuming that the help she had in finishing her university courses was equivalent to the support needed to navigate Employment Insurance and financial matters.

¹⁴ See General Division's decision at paras 6, 14, and 20.

¹⁵ See General Division decision at paras 22 and 25.

[46] While that may be so, in fact the General Division focussed on whether the Claimant reached out for any help, rather than on the nature of that help. The General Division wrote, “I find that in the same way as the Appellant did for the university courses, she could have asked for help, if she needed it, to complete an application for benefits. She could have contacted Service Canada for this help or asked her ex-husband for help. I find that this is what a reasonable and prudent person in a similar situation would have done.”¹⁶

[47] I am not satisfied that there is an arguable case on this point as the General Division did not make any findings about whether the help that she received in finishing her university courses was similar to the help that she needed in applying for Employment Insurance benefits.

- **The Commission’s evidence**

[48] The Claimant also argues that the General Division relied on inaccurate or unverified information from the Commission about why she did not apply for benefits sooner. The Commission’s notes indicate that the Claimant reportedly said that she held off on applying for benefits because she hoped to get another job. The Claimant denies that she ever told the Commission that she hoped to get another job, or that this explained why she held off on applying for benefits. The Claimant says that she simply was in no state to be able to even consider looking for work. She says that her cognitive impairments and emotional state made it difficult to manage even basic administrative tasks.

[49] The Claimant argues that the General Division accepted the Commission’s evidence without challenging or verifying it, or even considering her evidence. She says that this led to an unfair assessment of her credibility and situation.

[50] The General Division set out the evidence of both parties. At paragraph 19, the General Division wrote:

¹⁶ See General Division decision at para 28.

The Commission asked the Appellant why she delayed applying for benefits. Its notes say that the Appellant said she was hoping to get another job and didn't know she could apply for benefits. I asked the Appellant about this. She said she didn't say this. She reiterated that she delayed applying for benefits because she had a concussion and wasn't sure if she would be able to return to work.

[51] The General Division did not make any specific findings about this evidence, one way or the other. More importantly, the General Division did not find that the Claimant delayed making a claim for benefits because she hoped to find another job, nor did it base its decision on this point. For this reason, I am not satisfied that there is an arguable case that the General Division made a factual error about whether the Claimant had reported that she delayed applying for benefits because she hoped to get another job.

[52] As an aside, although the Claimant argues that the General Division made an unfair credibility assessment, I do not see any indication that credibility was an issue. The General Division accepted the Claimant's evidence. But credibility is a different issue altogether from accepting whether an applicant's evidence meets a legal test.

[53] I note that the General Division wrote that it asked the Claimant about the Commission's submission that she had not contacted Service Canada until her union representative told her that she should apply for benefits in April 2024. I find that to be a different issue altogether from whether the Claimant had reported that she delayed applying for benefits because she hoped to get another job.

[54] I am not satisfied that there is an arguable case that the General Division made the factual errors that the Claimant argues that it did.

Conclusion

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

Janet Lew
Member, Appeal Division