



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *A. M. v. Canada Employment Insurance Commission*, 2018 SST 381

Tribunal File Number: AD-18-28

BETWEEN:

**A. M.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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Leave to Appeal Decision by: Shu-Tai Cheng

Date of Decision: April 5, 2018

## **DECISION AND REASONS**

### **DECISION**

[1] The application for leave to appeal (Application) is refused.

### **OVERVIEW**

[2] The Applicant, A. M., applied for Employment Insurance (EI) benefits and an antedate (an earlier filing date) of his claim. The Respondent, the Canada Employment Insurance Commission (Commission), refused the antedate and determined that he did not have enough hours to qualify for EI benefits.

[3] The Applicant's appeal of the antedate decision has already been dismissed. Therefore, the only issue in the current appeal is the Commission's determination that the Applicant did not have enough hours to qualify for EI benefits.

[4] The Applicant appealed the Commission's decision to the General Division of the Social Security Tribunal of Canada. The General Division found that the Applicant was required to have 600 insurable hours of employment during his qualifying period and that since he had only 387 hours during that period, he did not have enough hours to qualify for benefits.

[5] The Applicant filed the Application with the Appeal Division and submitted that the General Division did not properly evaluate his case. His main argument is that the General Division failed to observe a principle of natural justice because it did not independently review the Commission's decision.

[6] I find that the appeal does not have a reasonable chance of success, because the Application simply repeats arguments made at the General Division and does not disclose any reviewable errors.

### **ISSUES**

[7] Issue 1: Is there an argument that the General Division failed to observe a principle of natural justice by not independently reviewing the Commission's decision?

[8] Issue 2: Is there an argument that the General Division based its decision on serious errors in the findings of fact, because it failed to take into account parts of the evidence in the appeal record?

## ANALYSIS

[9] An applicant must seek leave to appeal a General Division decision. The Appeal Division must either grant or refuse leave to appeal, and an appeal can proceed only if leave is granted.<sup>1</sup>

[10] Before I can grant leave to appeal, I must decide whether the appeal has a reasonable chance of success. In other words, is there an arguable ground upon which the proposed appeal might succeed?<sup>2</sup>

[11] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success<sup>3</sup> based on a reviewable error.<sup>4</sup> The only reviewable errors are the following: the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; it erred in law in making its decision, whether or not the error appears on the face of the record; or it based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[12] The Applicant submits that the General Division did not consider his arguments that his situation is not “the norm” and, therefore, cannot be reviewed within the constraints of the normal regulations.

### **Issue 1: Is there an argument that the General Division failed to observe a principle of natural justice by not independently reviewing the Commission’s decision?**

[13] The General Division did not fail to observe a principle of natural justice when it based its decision on the *Employment Insurance Act* (Act) and the *Employment Insurance Regulations* (Regulations).

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<sup>1</sup> *Department of Employment and Social Development Act* (DESD Act) at ss. 56(1) and 58(3).

<sup>2</sup> *Osaj v. Canada (Attorney General)*, 2016 FC 115, at para. 12; *Murphy v. Canada (Attorney General)*, 2016 FC 1208, at para. 36; *Glover v. Canada (Attorney General)*, 2017 FC 363, at para. 22.

<sup>3</sup> DESD Act at s. 58(2).

<sup>4</sup> DESD Act at s. 58(1).

[14] The Tribunal has the jurisdiction conferred to it by Parliament. It cannot vary the legal provisions of the Act or the Regulations, and it must apply the Act and the Regulations in accordance with the legislative scheme.

[15] The General Division and the Appeal Division must render decisions within their jurisdiction and must not act beyond or refuse to exercise their jurisdiction. The Applicant's argument that the Tribunal should have reviewed his situation without the constraints of the Act and the Regulations does not have a reasonable chance of success, because to do so would be to act beyond the jurisdiction conferred to the Tribunal.

**Issue 2: Is there an argument that the General Division decision is based on serious errors in the findings of fact, because it failed to take into account parts of the evidence in the appeal record?**

[16] The General Division did not base its decision on serious errors in the findings of fact.

[17] The General Division took into account the evidence in the appeal record, which included documentary evidence and the Applicant's testimony at the hearing. The General Division found that:

- a) the Applicant's qualifying period ran from July 20, 2014, to November 21, 2015 (including an 18-week extension of the 52-week period);
- b) the Applicant had accrued 387 hours in this period, which was fewer than the 600 he was required to have to qualify for benefits; and
- c) the Applicant's benefit period did not start in September 2013, as he had argued.

[18] Therefore, the Applicant did not have sufficient hours to qualify for EI benefits. In addition, the Tribunal does not have the discretion to vary or disregard the requirements (in the Act and the Regulations) to qualify for benefits, and it must apply the law.

[19] The Applicant argues that his situation should have been reviewed outside of the constraints of the "regulations" and that he was unaware that he could have applied for EI

benefits earlier than he did. For the most part, the Application repeats the Applicant's evidence and submissions before the General Division.

[20] The General Division considered the Applicant's arguments and the evidence on file. It considered his testimony and each of the reasons he advanced that his hours of employment from an earlier period should have been considered. The General Division's decision includes an analysis of each of the Applicant's arguments. It also stated that the Applicant's antedate request was the subject of an earlier appeal to the Tribunal. Therefore, the issues of an earlier deemed filing date and an earlier start date of the benefit period were determined in the past and are not issues in the current appeal.

[21] A simple repetition of the Applicant's arguments falls short of disclosing a ground of appeal that is based on a reviewable error.

[22] I have read and considered the General Division decision and the documentary record. I find that the General Division did not overlook or misconstrue any important evidence. There is no suggestion that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction, or that it erred in law in coming to its decision.

[23] I am satisfied that the appeal has no reasonable chance of success.

## **CONCLUSION**

[24] The Application is refused.

Shu-Tai Cheng  
Member, Appeal Division

REPRESENTATIVE:	A. M., self-represented
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