Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *M. F. v. Canada Employment Insurance Commission*, 2018 SST 446

Tribunal File Number: AD-17-854

BETWEEN:

M. F.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Shu-Tai Cheng

DATE OF DECISION: April 25, 2018

Canada

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Appellant, M. F., sought Employment Insurance (EI) benefits in 2016. His claim was denied by the Respondent, the Canada Employment Insurance Commission (Commission).

[3] The Commission denied the EI benefits because it determined that the Appellant had insufficient hours of insurable employment to qualify for benefits under the *Employment Insurance Act* (EI Act).

[4] The Appellant appealed the Commission's decision to the Social Security Tribunal of Canada. The Tribunal's General Division found that the Applicant had 545 insurable hours of employment and that he required 560 hours to qualify for benefits. Therefore, it summarily dismissed his appeal.

[5] The Appellant is appealing the General Division decision on the ground that his travel time between his first location of work and his second should be considered time worked.

[6] The Appeal Division finds that the General Division did not commit a reviewable error in making its decision. The Appellant did not have enough hours of insurable employment to qualify for EI benefits.

ISSUES

[7] Did the General Division base its decision on serious errors in fact finding, namely, in not including travel time in the Appellant's insurable hours?

ANALYSIS

[8] The Appellant is appealing a decision dated September 21, 2017, whereby the General Division summarily dismissed his appeal on the basis that the General Division was satisfied that the appeal did not have a reasonable chance of success.

[9] No leave to appeal is necessary in the case of an appeal from a summary dismissal by the General Division.[1]

[10] Given that no further hearing is required, this appeal before the Appeal Division is proceeding on the written record.[2]

[11] The only grounds of appeal to the Appeal Division are that the General Division erred in law; failed to observe a principle of natural justice; or 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.[3]

[12] The Appellant disputes the factual findings made by the General Division in that he argues that his travel time should have been included in his insurable hours.

PRELIMINARY MATTER: Legal Test for Summary Dismissal

[13] Subsection 53(1) of the *Department of Employment and Social Development Act* (DESD Act) allows the General Division to summarily dismiss an appeal if the General Division is satisfied that the appeal has no reasonable chance of success.

[14] The General Division correctly stated the legislative basis upon which it might summarily dismiss the appeal, citing subsection 53(1) of the DESD Act at paragraph 6 of its decision.

[15] However, it is insufficient to simply recite the wording related to a summary dismissal set out in subsection 53(1) of the DESD Act without properly applying it. After identifying the legislative basis, the General Division must correctly identify the appropriate legal test and apply the law to the facts.

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[1] DESD Act at subsection 53(3)
[2] *Social Security Tribunal Regulations* at paragraph 37(*a*).
[3] DESD Act at subsection 58(1)

[16] The General Division stated and applied the test, whether "[…] it is plain and obvious on the face of the record that the appeal is bound to fail, regardless of the evidence or arguments that could be presented at a hearing."[4]

[17] This is consistent with previous Appeal Division decisions on appeals of General Division summary dismissals[5] and applies a test established by the Federal Court of Appeal.[6]

Did the General Division base its decision on serious errors in fact finding, namely, in not including travel time in the Appellant's insurable hours?

[18] I find that the General Division did not base its decision on erroneous findings of fact made in a perverse or capricious manner or without regard to the material before it.

[19] The General Division concluded:

> The EI Act requires that a person have the required number of hours of insurable employment to qualify for benefits. In this case, the Appellant has only 545 hours of insurable employment whereas the required number is 560 hours; therefore the Tribunal finds that it is plain and obvious on the face of the record that his appeal is bound to fail.[7]

[20] The Appellant argues that the finding that he had only 545 hours of insurable employment is in error because his hours of employment should include travel time from the location at which he was first hired to work to the location to which he was transferred subsequently.

[21] The General Division considered the same argument.[8]

[22] The General Division found that the Appellant had 545 hours of insurable employment, based on an undisputed record of employment accounting for 23 hours and a Canada Revenue

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[4] General Division decision at paras. 35 and 36
[5] For example: *J. S. v. Canada Employment Insurance Commission*, 2015 SSTAD 715; *C. D. v. Canada Employment Insurance Commission*, 2015 SSTAD 594; *M. C. v. Canada Employment Insurance Commission*, 2015 SSTAD 237; *J. C. v. Minister of Employment and Social Development*, 2015 SSTAD 596
[6] *Lessard-Gauvin c. Canada (Attorney General)*, 2013 FCA 147; *Sellathurai v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2011 FCA 1; and *Breslaw v. Canada (Attorney General)*, 2004 FCA 264
[7] General Division decision at para. 36
[8] *Ibid.* at paras 25, 30, and 33

Agency employment insurance ruling representing the other 522 hours.[9] The Commission sought this ruling because the Appellant disputed a second record of employment showing 522 hours. The total of the two amounts is 545.

[23] The General Division's finding of fact—that the Appellant had 545 hours of insurable employment—was not made without regard for the material before it or in a perverse or capricious manner. This finding of fact was not erroneous and it was the only finding possible in the circumstances.

CONCLUSION

[24] The General Division did not make a reviewable error in making its decision.

[25] Therefore, the appeal is dismissed.

Shu-Tai Cheng
Member, Appeal Division

METHOD OF PROCEEDING:	On the record
APPEARANCES:	M. F., self-represented

[9] *Ibid.* at paras. 26 to 27