



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *N. L. v. Canada Employment Insurance Commission*, 2018 SST 452

Tribunal File Number: AD-18-133

BETWEEN:

N. L.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: April 30, 2018

DECISION AND REASONS

DECISION

[1] The Tribunal refuses leave to appeal to the Appeal Division.

OVERVIEW

[2] The Applicant, N. L. (Claimant), filed an initial claim for Employment Insurance benefits. The Respondent, the Canada Employment Insurance Commission (Commission), denied the Claimant's benefits claim, finding that she had insufficient hours of insurable employment in her qualifying period to qualify for benefits. The Claimant requested a reconsideration of this decision. The Commission maintained its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[3] The General Division concluded that the Claimant had insufficient hours to qualify for benefits under s.7 of the *Employment Insurance Act* (Act).

[4] The Claimant now seeks leave to appeal the General Division decision to the Appeal Division, essentially reiterating the testimony she gave before the General Division. She states that she was not advised by her employer that she would not have enough hours to qualify for benefits and that she had no control over her number of insurable hours. She would like to be compensated for the period for which she had no financial support.

[5] The Tribunal sent a letter to the Claimant requesting that she explain in detail why she was appealing to the Appeal Division. She was advised by the Tribunal that it was not sufficient to simply repeat what she had said to the General Division. The Claimant did not reply to the Tribunal's request.

[6] The Tribunal must decide whether there is some reviewable error of the General Division upon which the appeal might arguably succeed.

[7] The Tribunal refuses leave to appeal because the Claimant's appeal has no reasonable chance of success.

ISSUE: Does the Claimant address a reviewable error committed by the General Division upon which the appeal might arguably succeed?

ANALYSIS

[8] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESD Act) specifies the only grounds of appeal regarding a General Division decision. These reviewable errors are that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; erred in law in making its decision, whether or not the error appears on the face of the record; or based its decision on an erroneous finding of fact that it had made in a perverse or capricious manner or without regard for the material before it.

[9] An application for leave to appeal is a preliminary step to a hearing on the merits. It is an initial hurdle for the Claimant to meet, but it is lower than the one that must be met on the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove her case, but rather must establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, she must establish that there is arguably some reviewable error upon which the appeal might succeed.

[10] Therefore, before leave can be granted, the Tribunal must be satisfied that the reasons for appeal fall within any of the above-mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success.

[11] This means that the Tribunal must be in a position to determine, in accordance with s.58(1) of the DESD Act, whether there is a question of natural justice, jurisdiction, law, or fact, that may lead to the setting aside of the General Division decision under review.

Issue: Does the Claimant address a reviewable error committed by the General Division upon which the appeal might arguably succeed?

[12] The undisputed evidence before the General Division shows that the Claimant accumulated 164 hours of insurable employment in her qualifying period, when the minimum requirement for the Claimant to qualify to receive Employment Insurance benefits was 665 hours. She therefore does not fulfill the conditions required by the Act to be eligible for Employment Insurance benefits.

[13] The Tribunal acknowledges the Claimant's argument that the inability to accumulate sufficient hours of insurable employment was out of her control, given that her employer did not give her any advance notice of the impending termination.

[14] However, as the General Division correctly stated, the requirement outlined in the Act does not allow any discrepancy and provides no discretion. Neither the General Division nor the Appeal Division of this Tribunal can remove the defect from the Claimant's claim.

[15] Unfortunately for the Claimant, she has not identified any errors of jurisdiction or law, nor has she identified any erroneous findings of fact that the General Division may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision.

[16] For the above-mentioned reasons, following a review of the appeal docket and the General Division decision and upon consideration of the Claimant's arguments in support of her request for leave to appeal, the Tribunal finds that the appeal has no reasonable chance of success.

CONCLUSION

[17] The Tribunal refuses leave to appeal to the Appeal Division.

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	N. L., self-represented
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