



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *RR v Canada Employment Insurance Commission*, 2018 SST 692

Tribunal File Number: AD-18-365

BETWEEN:

**R. R.**

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: Pierre Lafontaine

Date of Decision: June 22, 2018

## DECISION AND REASONS

### DECISION

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

### OVERVIEW

[2] The Applicant, R. R. (Claimant), successfully qualified for sickness benefits. When she had received the maximum weeks of sickness benefits, she asked for her benefits to be converted to regular Employment Insurance (EI) benefits but was refused because she did not have sufficient hours of insurable employment to qualify for regular EI benefits. The Claimant requested a reconsideration of that refusal, arguing that her employer did not correctly record all the hours she had worked. Finding that her employer had provided detailed documentation of the hours she had worked and the pay she had received, the Respondent, the Canada Employment Insurance Commission (Commission), maintained its initial decision that the Claimant did not qualify for regular EI benefits. The Claimant appealed the Commission decision to the General Division of the Tribunal.

[3] The General Division found that, since the Claimant was required to have 665 hours of insurable employment in order to qualify for regular EI benefits and she had only 605 hours, the Claimant did not qualify for regular EI benefits.

[4] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. She essentially reiterates that her employer did not correctly record all the hours she had worked because she had worked overtime on several days. She argues that the General Division did not consider her evidence.

[5] The Tribunal sent a letter to the Claimant asking that she explain in detail her grounds of appeal in line with section 58 of the *Department of Employment and Social Development Act* (DESD Act). She was informed that the Tribunal did not have

jurisdiction to determine how many hours of insurable employment she had accumulated with her employer. The Claimant replied by refile her leave to appeal application.

[6] The Tribunal must decide whether the General Division has committed a reviewable error based on which the appeal might succeed.

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

### **ISSUE**

[8] Does the Claimant's appeal have a reasonable chance of success based on a reviewable error committed by the General Division?

### **ANALYSIS**

[9] Subsection 58(1) of the DESD Act specifies the only grounds of appeal of a General Division decision, which 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.

[10] 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; she must instead establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, the Claimant must show that there is arguably some reviewable error upon which the appeal might succeed.

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

[12] This means that the Tribunal must be in a position to determine, in line with subsection 58(1) of the DESD Act, whether there is an issue 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's appeal have a reasonable chance of success based on a reviewable error committed by the General Division?**

[13] The General Division found that, since the Claimant was required to have 665 hours of insurable employment in order to qualify for regular EI benefits and she had only 605 hours, the Claimant did not qualify for regular EI benefits.

[14] In her application for leave to appeal, the Claimant essentially reiterates that her employer did not correctly record all the hours she had worked because she had worked overtime on several days and that she does qualify. She argues that the General Division did not consider her evidence.

[15] Pursuant to subsection 90(1) of the *Employment Insurance Act* (EI Act), only an officer of the Canada Revenue Agency (CRA) authorized by the Minister can make a ruling on how many hours an insured person has had in insurable employment.

[16] It is well established in jurisprudence that the CRA has exclusive jurisdiction to determine how many hours of insurable employment a claimant has for the purposes of the EI Act.<sup>1</sup>

[17] Unfortunately for the Claimant, the Tribunal has no jurisdiction over such matters. A request for a ruling must be made to the CRA, which will then determine the number of hours the Claimant has had in insurable employment.

[18] After reviewing the docket of appeal and the General Division decision and considering 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.

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<sup>1</sup> *Canada (Attorney General) v. Romano*, 2008 FCA 117; *Canada (Attorney General) v. Didiolato*, 2002 FCA 345; *Canada (Attorney General) v. Haberman*, 2000 FCA 150.

[19] The Claimant has not set out a reason that falls into the grounds of appeal that are listed above and that could possibly lead to the reversal of the disputed decision.

**CONCLUSION**

[20] The Tribunal refuses leave to appeal to the Appeal Division of the Social Security Tribunal.

Pierre Lafontaine  
Member, Appeal Division

REPRESENTATIVE:	R. R., self-represented
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