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

[TRANSLATION]

Citation: *A. J. v Canada Employment Insurance Commission*, 2019 SST 144

Tribunal File Number: AD-19-117

BETWEEN:

A. J.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: February 19, 2019

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, A. J. (Claimant), made a claim for Employment Insurance benefits. The Canada Employment Insurance Commission determined that the Claimant was not entitled to benefits because he had accumulated only 420 hours of insurable employment, but he needed to accumulate 700 hours of insurable employment to be entitled to benefits. The Claimant requested a reconsideration of the decision, but the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[3] The General Division found that the Claimant had not accumulated enough hours of insurable employment to be entitled to benefits. It found that the Claimant did not meet the eligibility criteria in section 7(2) of the *Employment Insurance Act* (EI Act).

[4] The Claimant now seeks leave from the Tribunal to appeal the General Division decision.

[5] In support of his application for leave to appeal, the Claimant contests the General Division's finding that he is not entitled to benefits. He argues that the General Division did not consider hours related to his profession. He maintains that he worked hard for shady employers. He argues that he will determine the exact time he worked and will let the Tribunal know.

[6] The Tribunal must decide whether there is an arguable case that the General Division made a reviewable error based on which the appeal might have a reasonable chance of success.

[7] The Tribunal refuses leave to appeal because none of the grounds of appeal that the Claimant has raised give the appeal a reasonable chance of success.

ISSUE

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

ANALYSIS

[9] Section 58(1) of the *Department of Employment and Social Development Act* (DESD Act) sets out the only grounds of appeal for 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 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 of the case. 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 application for leave to appeal stage, the Claimant does not have to prove his case; instead, he must establish that his appeal has a reasonable chance of success. In other words, the Claimant must show that there is arguably some reviewable error based on which the appeal might succeed.

[11] The Tribunal will grant leave to appeal if it is satisfied that at least one of the grounds of appeal that a claimant has raised has a reasonable chance of success on appeal.

[12] This means that the Tribunal must be in a position to determine, in accordance with section 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 decision under review.

Issue: Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

[13] In support of his application for leave to appeal, the Claimant disputes the General Division's finding that he is not entitled to benefits. He argues that the General Division did not consider hours related to his profession. He maintains that he worked hard for shady employers. He argues that he will determine the exact time he worked and let the Tribunal know.

[14] The Claimant applied for Employment Insurance benefits on October 21, 2017; his qualifying period therefore is from October 23, 2016, to October 21, 2017. Based on the unemployment rate of 4.9% in the Oshawa area where the Claimant lived, 700 insurable hours was required to be entitled to benefits.

[15] On May 15, 2018, the Canada Revenue Agency (CRA) determined in four separate decisions that the Claimant had accumulated 188 hours of insurable employment during the period from September 19 to October 28, 2016 (GD9-12); 174 hours during the period from June 12 to July 17, 2017 (GD9-9); 210 hours from July 27 to September 11, 2017 (GD9-6); and finally 57 hours of insurable employment during the period from October 8 to 19, 2017 (GD9-3). In short, in the CRA's view, the Claimant accumulated 629 hours of insurable employment during the period from September 19, 2016, to October 19, 2017.

[16] However, the Claimant's qualifying period is from October 23, 2016, to October 21, 2017. The insurable hours that were accumulated before October 23, 2016, cannot therefore be taken into consideration when calculating the number of hours of insurable employment during the qualifying period. As a result, the Claimant accumulated 470 hours of insurable employment during the qualifying period when he needed to have accumulated 700.

[17] As the General Division found, the Claimant does not meet the eligibility criteria in section 7(2) of the EI Act.

[18] The Claimant maintains that he worked as X paid by piece rate and that this form of payment does not take into consideration the actual time worked. As a result, he will send the Tribunal the number of hours he believes he has worked.

[19] As noted by the General Division, the Tribunal does not have the authority to determine how many hours an insured person has had in insurable employment. The CRA does. Section 90(1)(d) of the EI Act clearly states that only an officer of the CRA authorized by the Minister can make a ruling on the issue of how many hours an insured person has had in insurable employment.

[20] The Tribunal notes that the Claimant chose not to participate in the CRA's investigation. He also decided not to appeal the CRA's decisions. Since the CRA's decisions are not the subject of the Claimant's appeal, they are now *res judicata*.

[21] As the General Division noted, the EI Act does not allow any discrepancy and gives the Tribunal no discretion to allow the Applicant to satisfy the conditions for benefit entitlement.

[22] The Tribunal finds that the Applicant does not raise in his application for leave to appeal any issue of law, fact, or jurisdiction that may justify the setting aside of the decision under review.

[23] After reviewing the appeal file, the General Division's decision and the Applicant's arguments, the Tribunal finds that the General Division considered the material before it and properly applied the EI Act.

[24] The Tribunal has no choice but to find that the appeal has no reasonable chance of success.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	A. J., self-represented