



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *F. L. v Canada Employment Insurance Commission*, 2019 SST 708

Tribunal File Number: AD-19-457

BETWEEN:

**F. L.**

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: August 9, 2019

## DECISION AND REASONS

### DECISION

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

### OVERVIEW

[2] The Applicant, F. L. (Claimant), applied for employment insurance sickness benefits. She had accumulated 734 hours of insurable employment in her qualifying period but because of a previous serious violation, she needed to have the increased requirement of 1,050 hours to qualify for sickness benefits. The Claimant did not meet the increased requirement to qualify and, therefore, could not be paid any benefits. She asked the Canada Employment Insurance Commission (Commission) to reconsider its decision, arguing she was unaware the serious violation would impact her future EI benefits and that she had been misled by the Commission about how many hours she needed to qualify. The Commission maintained its decision to deny her claim for sickness benefits and the Claimant appealed to the General Division.

[3] The General Division concluded that the Claimant had insufficient hours to qualify for benefits pursuant to section 7.1(1) of the *Employment Insurance Act* (EI Act).

[4] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. She essentially reiterates her testimony before the General Division. She states that the Commission misinformed her regarding how many hours she needed to qualify. Because of this incorrect information, she has not been able to provide for her family and has been under serious financial stress.

[5] On July 8, 2019, the Tribunal sent a letter to the Claimant requesting that she explain in detail why she was appealing to the Appeal Division. The Tribunal advised her that it was not sufficient to simply repeat what she had said to the General Division. The Claimant did not reply to the request of the Tribunal.

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

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

## **ISSUE**

**Does the Claimant raise some reviewable error of the General Division upon which the appeal might arguably succeed?**

## **ANALYSIS**

[8] Section 58(1) of the *Department of Employment and Social Development Act* (DESD Act) specifies the only grounds of appeal of 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; 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 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 must establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, that there is arguably some reviewable error upon which the appeal might succeed.

[10] Therefore, before leave can be granted, the Tribunal needs to 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 subsection 58(1) of the DESD Act, whether there is a question of natural justice, jurisdiction, law, or fact, the answer to which may lead to the setting aside of the General Division decision under review.

**Does the Claimant raise some reviewable error of the General Division upon which the appeal might arguably succeed?**

[12] The undisputed evidence before the General Division shows that the Claimant accumulated 734 hours of insurable employment in her qualifying period but because of a previous serious violation, she needed to have the increased requirement of 1,050 hours to qualify for sickness benefits. She therefore does not fulfill the conditions required by the EI Act to be eligible for unemployment benefits.

[13] The Tribunal acknowledges the Claimant's argument that the Commission misinformed her regarding how many hours she needed to qualify and that when she found out the correct number of hours that were required, it was too late.

[14] However, as correctly stated by the General Division, the EI Act does not allow any discrepancy and provides no discretion in regards to the required number of hours to qualify. 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 identified any erroneous findings of fact, which 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 and after reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Claimant 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:	F. L., Self-represented
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