



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *A. R. v Canada Employment Insurance Commission*, 2019 SST 1254

Tribunal File Number: AD-19-359

BETWEEN:

A. R.

Appelant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: September 26, 2019

DECISION AND REASONS

DECISION

[1] The Tribunal dismisses the appeal.

OVERVIEW

[2] The Appellant, A. R. (Claimant), filed a claim for Employment Insurance benefits. The Canada Employment Insurance Commission (Commission) informed the Claimant that he was not entitled to benefits because he had accumulated 943 insurable hours of employment between March 4, 2018, and January 5, 2019, and that he had to accumulate 1,225 hours to be entitled to benefits following an earlier issuance of a notice of violation.

[3] The Claimant asked the Commission to reconsider the decision. The Commission informed the Claimant that it had recalculated his insurable hours of employment following the information received and that the Claimant had 1,165 insurable hours of employment. However, it indicated to the Claimant that it upheld the initial decision regarding the disentitlement to benefits. The Claimant appealed the reconsideration decision to the General Division.

[4] The General Division determined that the Claimant's appeal had no reasonable chance of success. He had accumulated 1,165 insurable hours of employment but needed 1,225 insurable hours of employment. It summarily dismissed the Claimant's appeal. The Claimant appealed the summary dismissal to the Appeal Division.

[5] The Claimant argues that the Commission should have informed him earlier about the number of hours required to be entitled. He submits that, since he already paid a \$6,000 penalty for an earlier offence, the Commission could not impose another penalty on him by requiring more insurable hours of employment to be entitled to benefits.

[6] The Tribunal must decide whether the General Division erred by summarily dismissing the Claimant's appeal.

[7] The Tribunal dismisses the Claimant's appeal.

ISSUE

[8] Did the General Division err by summarily dismissing the Claimant's appeal?

ANALYSIS

Appeal Division's Mandate

[9] The Federal Court of Appeal has determined that the Appeal Division's mandate is limited to the one conferred to it by sections 55 to 69 of the *Department of Employment and Social Development Act* (DESD Act).¹

[10] The Appeal Division acts as an administrative appeal tribunal for decisions rendered by the General Division and does not exercise a superintending power similar to that exercised by a higher court.

[11] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law, 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, the Tribunal must dismiss the appeal.

Issue: Did the General Division err by summarily dismissing the Claimant's appeal?

[12] The Tribunal must determine whether the General Division erred by summarily dismissing the Claimant's appeal.

[13] The General Division must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success.²

¹ *Canada (Attorney General) v. Jean*, 2015 FCA 242; *Maunder v Canada (Attorney General)*, 2015 FCA 274.

² DESDA, s 53(1).

[14] The Appeal Division has determined that the correct test to be applied in cases of summary dismissal is the following:

- Is it obvious, on the face of the record, that the appeal is bound to fail?

[15] The Appeal Division stated that the question is not whether the appeal must be dismissed after considering the facts, case law, and submissions. Rather, the real question is to determine whether the appeal is bound to fail, no matter what the arguments or evidence that might be presented at the hearing.

[16] In this case, the General Division stated that the Claimant needed 1,225 insurable hours of employment between March 4, 2018, and January 5, 2019, and that he had accumulated only 1,175 hours. It found that the Claimant had no chance of success on appeal, not matter what arguments or evidence were presented at the hearing.

[17] The Claimant argues that he should have been informed beforehand of the number of hours required to qualify for benefits.

[18] As noted by the General Division, the Commission's August 8, 2017, letter to the Claimant informs him that, following the issuance of the notice of violation, he was required to have an increased number of insurable hours of employment in order to be entitled to benefits. The Commission's January 16, 2019, decision indicates to the Claimant that, following the issuance of the notice of violation, he needed 1,225 insurable hours of employment to be entitled to benefits, while he had accumulated only 943 insurable hours of employment.

[19] Therefore, the Claimant had been informed of the number of hours required before his reconsideration request and before his conversation with the representative from the Commission. As noted by the General Division, he could not have been informed before that since the number of hours required varies depending on the rate of unemployment in the region where the Claimant resides at the time of his application.³

³ *Employment Insurance Act*, s 7.1(1).

[20] The Claimant also argues that, since he already paid a penalty of \$6,000 for the earlier offence, the Commission could not impose another penalty on him for the same offence by requiring more insurable hours of employment to be entitled to benefits.

[21] It is true that the General Division did not consider this argument by the Claimant, which is in his application for appeal.⁴ Nevertheless, the Tribunal is of the view that the Claimant's argument should be raised following the Commission's August 8, 2017, decision to impose a penalty on him and to issue a notice of violation requiring him to work more hours to be entitled to benefits, and not after the Commission's later decision refusing him benefits on the basis of insufficient insurable hours of employment.

[22] The Tribunal agrees that, on reading this file, it is plain and obvious that the appeal to the General Division was bound to fail. Therefore, the Tribunal agrees with the General Division's decision to summarily dismiss the appeal.

[23] For the reasons mentioned above, it is appropriate to dismiss the appeal.

CONCLUSION

[24] The appeal is dismissed.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	September 24, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCE:	A. R., Appellant

⁴ GD2-2.