



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *D. H. v Canada Employment Insurance Commission*, 2019 SST 1393

Tribunal File Number: AD-19-713

BETWEEN:

D. H.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: December 11, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, D. H. (Claimant), is a teacher for the X school board. The 2017/2018 school year ended on June 28, 2018, and an assignment review for the school year beginning on August 23, 2018, was completed on July 3, 2018. The Claimant officially accepted that offer on August 16, 2018, and he signed his contract on September 4, 2018. On August 26, 2019, the Canada Employment Insurance Commission (Commission) informed the Claimant that it could not pay him benefits during the non-teaching period from July 3, 2018, to August 22, 2018. The Claimant requested a reconsideration of that decision, but the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[3] The General Division determined that the Claimant's contract had not ended on June 28, 2018, because there had been no break in the employment relationship. It also determined that the Claimant was not employed on a casual or substitute basis and that he had not met the necessary criteria in an occupation other than teaching to receive Employment Insurance. The General Division found that the Claimant was therefore not entitled to receive benefits during the period from July 3, 2018, to August 22, 2018.

[4] The Claimant now seeks leave to appeal the General Division decision. He submits that the General Division made an error by applying the new criterion regarding the continuity of the employment relationship. He argues that this factor is in no way included in the *Employment Insurance Act* (EI Act) and the *Employment Insurance Regulations* (EI Regulations). He also argues that his benefits are independent of the existence or non-existence of continuity in the employment relationship.

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

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

ISSUE

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

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; 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 his case; instead, he must establish that his appeal has a reasonable chance of success. In other words, he must establish that there is an arguable case that there is a reviewable error based on which the appeal has a reasonable chance of success.

[10] The Tribunal will grant leave to appeal if it is satisfied that at least one of the Claimant's stated grounds of appeal has a reasonable chance of success.

[11] 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 could lead to the setting aside of the decision under review.

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

[12] In support of his application for leave to appeal, the Claimant argues that the General Division made an error by applying the new criterion regarding the continuity of the employment relationship. He submits that this factor is in no way contained in the EI Act and EI Regulations. He also argues that his benefits are independent from the existence or not of continuity in the employment relationship.

[13] Contrary to the Claimant's argument, the criterion regarding the continuity of employment is not a new criterion. The Federal Court of Appeal has repeatedly affirmed the applicable legal standard: Without a clear break in the continuity of their employment, a teacher will not be entitled to receive benefits during the non-teaching period.¹

[14] On reading the General Division decision, it appears that the General Division examined whether there had been a clear break in the continuity of the Claimant's employment so that the Claimant became unemployed within the meaning of the case law.

[15] The General Division considered both the Federal Court of Appeal case law and the legislative intent behind section 33 of the EI Regulations.

[16] The Federal Court of Appeal has upheld the principle that the exemption provided by section 33(2)(a) of the EI Regulations is intended to provide relief to teachers when there has been a genuine severance of the employee-employer relationship after the teaching period. Teachers who had their contracts renewed for the new school year before the end of their teaching contracts, or shortly afterwards, were not unemployed and their employment continued, even if there was a period between contracts.

[17] Considering that the Claimant worked as a teacher from August 24, 2017, to June 28, 2018; considering that he accepted a verbal offer for a teaching contract from the same school board for the 2018/2019 school year on July 3, 2018, and that the contract

¹ *Oliver v Canada (Attorney General)*, 2003 FCA 98; *Stone v Canada (Attorney General)*, 2006 FCA 27; *Canada (Attorney General) v Robin*, 2006 FCA 175.

was not modified when contracts were assigned on August 16, 2018; and considering that his seniority is recognized and that pension fund contributions continue from one year to the next, the Tribunal cannot see how the General Division could reasonably have found that there had been a break in the employment relationship between the Claimant and the school board.

[18] The Claimant also does not meet the definition of section 33(2)(b) of the *EI Regulations*, and he does not meet the conditions to receive benefits for an occupation other than teaching under section 33(2)(c) of the *EI Regulations*.

[19] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for leave to appeal, the Tribunal finds that the appeal has no reasonable chance of success. The Claimant has not raised an issue that could lead to the setting aside of the decision under review.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	D. H., self-represented
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