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

Citation: *A. D. v Canada Employment Insurance Commission*, 2019 SST 1386

Tribunal File Number: AD-19-798

BETWEEN:

A. D.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Janet Lew

Date of Decision: November 29, 2019

Canada

DECISION AND REASONS

DECISION

[1] The application for leave to appeal is refused.

OVERVIEW

[2] The Applicant, A. D. (Claimant), is seeking leave to appeal the General Division's decision. Leave to appeal means that an applicant has to get permission from the Appeal Division before they can move on to the next stage of the appeal process.

[3] The General Division determined that the Claimant was entitled to receive 22 weeks of Employment Insurance regular benefits. The General Division also found that it did not have any authority to increase the number of weeks of benefits that the Claimant could receive.

[4] The Claimant argues that the General Division made several mistakes. He argues that he is entitled to receive additional weeks of benefits because he paid more than 22 weeks of Employment Insurance premiums. He claims that it is unfair that the Respondent, the Canada Employment Insurance Commission (Commission), is able to limit coverage. As a matter of fairness, he says that coverage in his case should extend beyond 22 weeks. He also argues that the *Employment Insurance Act* is discriminatory because some workers are entitled to receive more weeks of benefits than other workers.

[5] I have to be satisfied that the appeal has a reasonable chance of success before granting leave to appeal. I am not satisfied that the appeal has a reasonable chance of success and I am therefore refusing the application for leave to appeal.

ISSUE

[6] The only issue is whether the appeal has a reasonable chance of success? In other words, is there an arguable case that the process before the General Division was unfair, or that the General Division erred in law or made an important factual error?

ANALYSIS

[7] Before the Claimant can move on to the next stage of the appeal, I have to be satisfied that the Claimant's reasons for appeal fall into at least one of the types of errors listed in subsection 58(1) of the *Department of Employment and Social Development Act*. The types of errors are:

1. The General Division was not fair in its processes.
2. The General Division did not decide an issue that it should have decided. Or, it decided something that it did not have the power to decide.
3. The General Division made an error of law when making its decision.
4. The General Division based its decision on an important error of fact.

[8] The appeal also has to have a reasonable chance of success. A reasonable chance of success is the same thing as an arguable case at law.[1] This is a relatively low bar because claimants do not have to prove their case; they simply have to show that there is an arguable case. At the actual appeal, the bar is much higher.

[9] The Claimant suggests that the Commission is corrupt because it does not have to provide any benefits at all to an insured. I see no merit to this argument. Employment insurance benefits are payable if an insured person is qualified to receive them.[2] In this case, the General Division determined that the Claimant was entitled to 22 weeks of benefits. Indeed, the Claimant confirmed that he had already received approximately 5 months of benefits.[3]

[10] The Claimant also argues that the General Division was unfair because it should have given him more than 22 weeks of benefits. He says that it is unfair that the Commission limited the weeks of benefits when it collected more than 22 weeks of premiums from him. He contends

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[1] This is what the Federal Court of Appeal said in *Fancy v. Canada (Attorney General)*, 2010 FCA 63.
[2] See subsections 7(1) and (2) of the *Employment Insurance Act*.
[3] See Claimant's request for reconsideration, at GD3-17.

that he is entitled to more than 22 weeks of benefits. He raised these same arguments at the General Division.

[11] The *Employment Insurance Act* determines the maximum number of weeks of benefits that may be paid in a benefit period. Schedule 1 – Table of Weeks of Benefits sets out the number of weeks of benefits. To calculate the weeks of benefits, one looks at the regional rate of unemployment that applies to a claimant and the corresponding number of hours of insurable employment in that claimant's qualifying period.

[12] The General Division set out the relevant facts. It noted that the Claimant worked from June 6 to December 24, 2018, and that he accumulated 1185 insurable hours. The General Division also noted that the rate of unemployment in the region in which he resided was 6.4%. The Claimant does not contest these findings of facts and I see no error in its findings.

[13] The General Division then calculated the number of weeks of benefits for the Claimant by using Schedule 1 of the *Employment Insurance Act*. Based on his hours of insurable employment and his regional rate of unemployment, the General Division determined that the Claimant was entitled to receive 22 weeks of benefits under the table. I see no error in the General Division's calculation or in its application of the law to the facts.

[14] The Claimant however suggests that the General Division was wrong to rely on the *Employment Insurance Act* to decide the number of weeks of benefits he would get. This argument is without any merit. The *Employment Insurance Act* necessarily has to apply. The General Division did not have any discretionary authority to ignore the *Employment Insurance Act*.

[15] If the Claimant wants to receive benefits under the *Employment Insurance Act*, he needs to meet the requirements set out in the *Employment Insurance Act* to qualify for benefits. He is also bound by the rules set out in the *Employment Insurance Act*.

[16] The *Employment Insurance Act* is very specific about how many weeks of benefits a claimant may receive. There is no basis upon which the General Division could have deviated from the formula under the *Employment Insurance Act* for calculating the weeks of benefits. As

the General Division member pointed out, she did not have any discretionary authority to vary the weeks of benefits to which a claimant is entitled. She had to apply the law as it is written.

[17] The Claimant argues that Schedule 1 is unfair because some workers receive more weeks of benefits. For instance, workers in a region of higher unemployment generally are entitled to receive more weeks of benefits.

[18] The additional weeks of benefits in other regions are intended to account for the higher rates of unemployment. Workers in regions of higher rates of unemployment theoretically are unlikely to find work as readily as workers in regions of lower rates of unemployment. Hence, they receive more weeks of replacement income to reflect this.

[19] Even if there is anything inherently unfair about Schedule 1 or any provisions of the *Employment Insurance Act* and the Claimant proposes that the law be changed, his remedies, if any, lie elsewhere.

[20] Apart from the Claimant's arguments that I have already addressed, the Claimant does not otherwise suggest that the General Division failed to give him a fair hearing, that it made any other errors in law or any other factual errors. I have reviewed the underlying record. I do not see that the hearing was unfair, that the General Division erred in law, whether or not the error appears on the record, or that it failed to properly account for any of the key evidence before it.

CONCLUSION

[21] I am not satisfied that the appeal has a reasonable chance of success. The application for leave to appeal is therefore refused.

Janet Lew
Member, Appeal Division

APPLICANT:	A. D., Self-represented