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

Citation: *A. M. v Canada Employment Insurance Commission*, 2020 SST 681

Tribunal File Number: AD-20-713

BETWEEN:

A. M.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: July 30, 2020

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, A. M. (Claimant), left his most recent employment in November 2010 and applied for Employment Insurance benefits on February 27, 2020. The Respondent, the Canada Employment Insurance Commission (Commission), refused to pay him benefits because the Claimant did not have any hours of insurable employment in his qualifying period. That meant that he did not qualify for Employment Insurance benefits. The Claimant asked the Commission to reconsider but the Commission would not change its decision.

[3] The Claimant appealed to the General Division of the Social Security Tribunal, which dismissed his appeal. He is now asking for leave (permission) to appeal to the Appeal Division.

[4] The Claimant has no reasonable chance of success on appeal. He has not raised an arguable case that the General Division made an error of law.

WHAT GROUNDS CAN I CONSIDER FOR THE APPEAL?

[5] To allow the appeal process to move forward, I must find that there is a "reasonable chance of success" on one or more of the "grounds of appeal" found in the law. A reasonable chance of success means that there is an arguable case. This would be some argument on which the Claimant could possibly be successful in his appeal.[1]

[6] The Claimant's reasons for appealing must fit within the "grounds of appeal" because these grounds describe the errors that I am authorized to consider. I can consider only whether the General Division made any of the following errors:[2]

1. The General Division hearing process was not fair in some way.

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[1] This is explained in a case called *Canada (Minister of Human Resources Development) v Hogervorst*, 2007, FCA 41; and in *Ingram v Canada (Attorney General)*, 2017 FC 259.
[2] This is a plain-language version of the three grounds. The full text is in section 58(1) of the *Department of Employment and Social Development Act.*

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

ISSUE

[7] Is there an arguable case that the General Division made an error of law by failing to consider the Claimant's mitigating circumstances?

ANALYSIS

Mitigating circumstances

[8] The Commission originally found that the Claimant did not qualify for benefits because he did not have any hours in his qualifying period. The General Division said that it had no discretionary power when it comes to deciding if the Claimant qualifies for benefits and agreed that the Claimant could not qualify without having accumulated hours of insurable employment in his qualifying period.

[9] The Claimant argues that the General Division could and should have considered his mitigating circumstances. He says that if her discretion is limited, she must proceed by way of analogy.

[10] There is no arguable case that the General Division made an error of law. As noted by the General Division, it is required to apply the law. The *Employment Insurance Act* (EI Act) says that a claimant must have a certain number of hours of insurable hours in his or her qualifying period to qualify for benefits.[3]

[11] A claimant's qualifying period is the 52-week period immediately before the beginning of his or her benefit period.[4] By law, the Claimant's benefit period begins on the Sunday of the week in which he first made his claim for benefits because this date is later than the Sunday of the week in which he first experienced an interruption of earnings.[5] The Claimant applied for

[3] Section 7(2) of the (EI Act).
[4] Section 8(1)(a) of the EI Act.
[5] Section 10(1) of the EI Act.

benefits on February 27, 2020, so his benefit period would begin on Sunday, February 23, 2020. That means that his qualifying period was the 52-week period ending on February 23, 2020.

[12] The exact number of hours of insurable employment that the Claimant would have been required to accumulate in his qualifying would be based on the unemployment rate for the region in which the claimant was ordinarily resident at the time that he applied for benefits.[6] The Claimant said he lived between Montreal and Toronto. The rate of unemployment for the Montreal region was 6.1%. An unemployment rate of between 6 and 7 percent requires 665 hours of insurable employment.[7] If Montreal were the Claimant's ordinary residence when he applied for benefits, he would have required 665 hours. The rate of unemployment for the Toronto region was 5%. An unemployment rate less of 6% or less requires 700 hours.[8] The Claimant would have required 700 hours if Toronto were his ordinary residence.

[13] As noted by the General Division, the Claimant acknowledged that he did not work in the 52 weeks just before he applied for benefits. Therefore, he had zero hours of insurable employment in his qualifying period. The General Division was correct at law when it said that the Claimant did not have the required number of hours to qualify, regardless of whether he lived in the Toronto region or the Montreal region.

[14] The Claimant argued that the General Division should have considered the mitigating circumstances and that his circumstances were exceptional. His circumstances may well be exceptional, but the law does not allow for exceptional circumstances in this matter. A claimant cannot qualify without the required number of hours in his or her qualification period, no matter what his circumstances.

[15] The law allows that the *qualifying period* may be extended in specified circumstances,[9] but there was no evidence that those circumstances applied to the claimant, or that the claimant would have accumulated sufficient hours to qualify even if his qualifying period had been extended.

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[6] Section17(1.1)(a) of the *Employment Insurance Regulations* (EI Regulations).
[7] *Supra*, note 3.
[8] *Ibid*.
[9] Section 8(2) of the EI Act.

[16] The Claimant argued that the General Division could have "proceeded by analogy" if it did not have the discretion to allow his claim otherwise. If the Claimant is referring to the Tribunal's ability to proceed by analogy under section 2 of the *Social Security Tribunal Regulations* (SST Regulations), he has misunderstood how section 2 applies. Section 2 of the SST Regulations describes how the General Division should conduct itself when something unusual occurs in an appeal that is related to the process of hearing the appeal. It does not refer to how the General Division weighs the evidence or applies the law. Even if the General Division had to proceed by analogy to the SST Regulations in some respect, it does not have the authority to make a decision that is inconsistent with the EI Act and EI Regulations.

[17] The General Division is required to apply the law and it applied the law. It made no error.

[18] The Claimant has no reasonable chance of success in an appeal.

CONCLUSION

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

Stephen Bergen
Member, Appeal Division

REPRESENTATIVES:	A. M., Self-represented