



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *C. M. v Canada Employment Insurance Commission*, 2020 SST 693

Tribunal File Number: AD-20-618

BETWEEN:

C. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: August 12, 2020

DECISION AND REASONS

DECISION

[1] The Tribunal dismisses the appeal.

OVERVIEW

[2] The Appellant, C. M. (Claimant), applied for employment insurance regular benefits. The Respondent, the Canada Employment Insurance Commission (Commission), notified the Claimant that it was unable to pay him employment insurance benefits because he had 694 hours of insurable employment, but needed 700 hours to qualify for benefits. The Claimant requested a reconsideration of the Commission's decision. The Commission maintained its initial decision. The Claimant appealed to the General Division.

[3] After the Canada Revenue Agency (CRA) issued an insurability ruling that the Claimant had 699 hours of insurable employment for the period under review, the General Division sent a letter to the Claimant advising him that it was considering summarily dismissing the appeal and inviting written submissions explaining why his appeal had a reasonable chance of success.

[4] The General Division summarily dismissed the Claimant's appeal. It found that it was plain and obvious that the Claimant's appeal was bound to fail. He had 699 hours of insurable employment whereas the *Employment Insurance Act* (EI Act) required 700 hours.

[5] The Tribunal must decide whether the General Division erred when it summarily dismissed the Claimant's appeal.

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

ISSUE

Did the General Division make an error when it summarily dismissed the Claimant's appeal?

ANALYSIS

Appeal Division's mandate

[7] The Federal Court of Appeal has determined that when the Appeal Division hears appeals pursuant to subsection 58(1) of the *Department of Employment and Social Development Act* (DESD Act), the mandate of the Appeal Division is conferred to it by sections 55 to 69 of that Act.¹

[8] 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.²

[9] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law, 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.

Did the General Division make an error when it summarily dismissed the Claimant's appeal?

[10] I must decide whether the General Division erred when it summarily dismissed the Claimant's appeal.

[11] The General Division must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success.³

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

- Is it plain and obvious on the face of the record that the appeal is bound to fail? ⁴

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

² *Idem*.

³ Section 53(1) of the DESD Act.

[13] In this case, the Claimant filed a claim for employment insurance benefits on November 2, 2018. His qualifying period was determined to be from October 29, 2017, to October 27, 2018. The CRA issued an insurability ruling that the Claimant had 699 hours of insurable employment for the period under review. Therefore, the evidence before the General Division demonstrates that the Claimant had only accumulated 699 hours of insurable employment during his qualifying period while he needed 700 hours of insurable employment to qualify for regular benefits.

[14] In appeal, the Claimant filed an Employment Standard decision rendered in his favor. I must reiterate that the role of the Appeal Division is not to consider new evidence. The powers of the Appeal Division are limited by section 58(1) of the DESD Act. I must render my decision based on the evidence presented to the General Division.

[15] Furthermore, it is well-established jurisprudence that the CRA has exclusive jurisdiction to make a determination on how many hours of insurable employment a claimant possesses for the purposes of the EI Act.⁵ This decision can be appealed. The Claimant did not appeal the CRA ruling that he had 699 hours of insurable employment for the period under review.

[16] I find that the General Division applied the correct test. I agree that it was plain and obvious on the face of the record that the appeal to the General Division was bound to fail. As such, the General Division member's determination that this appeal should be summarily dismissed was correct.

CONCLUSION

[17] The appeal is dismissed.

Pierre Lafontaine
Member, Appeal Division

⁴ *J. S. v Canada Employment Insurance Commission*, 2015 SSTAD 1132; *C. D. v Canada Employment Insurance Commission*, 2015 SSTAD 594.

⁵ *Canada (Attorney General) v Romano*, 2008 FCA 117; *Canada (Attorney General) v Didiolato*, 2002 FCA 34; *Canada (Attorney General) v Haberman*, 2000 FCA 150.

HEARD ON:	August 11, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCE:	C. M., Appellant