



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. T. v Canada Employment Insurance Commission*, 2020 SST 761

Tribunal File Number: AD-20-748

BETWEEN:

A. T.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: September 8, 2020

DECISION AND REASONS

DECISION

[1] The Tribunal refuses leave to appeal.

OVERVIEW

[2] The Applicant, A. T. (Claimant), applied for Employment Insurance (EI) benefits, but the Canada Employment Insurance Commission (Commission) decided that he had not worked enough hours to qualify. The Claimant needed 630 hours but only had 177 hours.

[3] The Claimant disagrees with the amount of insurable hours. The Commission maintained its initial decision that the Claimant did not qualify for regular EI benefits. The Claimant appealed the Commission decision to the General Division of the Tribunal.

[4] The General Division found that since the Claimant was required to have 630 hours of insurable employment in order to qualify and that he only had 177 hours, he did not qualify for regular EI benefits.

[5] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. He puts forward that the General Division erred and misconstrued evidence and the number of hours worked.

[6] The Tribunal sent a letter to the Claimant requesting that he explain in detail his grounds of appeal in accordance with section 58 of the *Department of Employment and Social Development Act* (DESD Act). The Claimant did not reply to the Tribunal's request.

[7] The Tribunal must decide whether there is some reviewable error of the General Division upon which the appeal might succeed.

[8] The Tribunal refuses leave to appeal because the Claimant's appeal has no reasonable chance of success.

ISSUE

[9] Does the Claimant raise some reviewable error of the General Division upon which the appeal might arguably succeed?

ANALYSIS

[10] Section 58(1) of the DESD Act specifies the only grounds of appeal of a General Division decision. These reviewable errors are that:

- (a) the General Division: failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- (c) the General Division 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.

[11] 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 but must establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, that there is arguably some reviewable error upon which the appeal might succeed.

[12] Therefore, before leave can be granted, the Tribunal needs to be satisfied that the reasons for appeal fall within any of the above mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success.

Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

[13] The General Division found that since the Claimant was required to have 630 hours of insurable employment in order to qualify and that he only had 177 hours, he did not qualify for regular employment insurance benefits.

[14] The *Canada Revenue Agency* (CRA) ruled that the Claimant only had 177 hours. The Claimant appealed the CRA ruling but the CRA confirmed its decision on appeal.

[15] It is well established in 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.¹

[16] Unfortunately for the Claimant, the Tribunal has no jurisdiction on such matters. The evidence before the General Division shows that the Claimant does not meet the requirements of the EI Act, so he does not qualify for benefits.

[17] After reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Claimant in support of his request for leave to appeal, I have no choice but to find that the appeal has no reasonable chance of success.

[18] The Applicant has not set out a reason which falls into the above enumerated grounds of appeal that could possibly lead to the reversal of the disputed decision.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	A. T., Self-represented
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¹ *Canada (Attorney general) v Romano*, 2008 FCA 117, *Canada (Attorney general) v Didiodato*, 2002 FCA 34, *Canada (Attorney general) v Haberman*, 2000 FCA 150.