



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *FF v Canada Employment Insurance Commission*, 2020 SST 1026

Tribunal File Number: AD-20-826

BETWEEN:

**F. F.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: December 9, 2020

## **DECISION AND REASONS**

### **DECISION**

[1] The Tribunal refuses leave to appeal.

### **OVERVIEW**

[2] The Applicant (Claimant) applied for Employment Insurance (EI) maternity and parental benefits. The Respondent, the Canada Employment Insurance Commission (Commission), determined that the Claimant had not worked enough hours to qualify. It found that the Claimant had 510 hours but needed 600 hours.

[3] The Claimant put forward that she would have worked enough hours if not for the COVID-19 public health emergency. She asked that the Commission consider her unique circumstances and allow her to receive EI maternity and parental benefits to support her family. The Commission maintained its initial decision that the Claimant did not have enough hours to qualify for EI benefits. The Claimant appealed the Commission decision to the General Division of the Tribunal.

[4] The General Division concluded that the Claimant did not qualify for EI maternity and parental benefits since was required to have 600 hours of insurable employment but only had 510 hours. The General Division concluded that it had no discretion to circumvent, rewrite or ignore the law.

[5] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. She puts forward that she lost her job because of COVID-19. She submits that she did not have a choice to stop working which prevented her from accumulating the necessary hours. She puts forward that the government did not change the law to address her situation.

[6] The Tribunal sent a letter to the Claimant requesting that she explain in detail her grounds of appeal in accordance with section 58 of the *Department of Employment and Social Development Act* (DESD Act). More precisely, she was asked to explain why she disagreed with the General Division that found she did not have enough working hours to

qualify for benefits under the *Employment Insurance Act* (EI Act). The Claimant did not reply to the Tribunal's request within the allowed period.

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

[8] I have no choice but to refuse 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 *Department of Employment and Social Development 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 her 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 granting leave, 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 Claimant, in support of her application for leave to appeal, puts forward that she lost her job because of COVID-19. She did not have a choice to stop working which prevented for accumulating the necessary hours to qualify. She submits that the government did not change the law to address her specific situation.

[14] The Claimant testified before the General Division that she was previously on maternity leave before she returned to work in March 2020. She went on maternity leave in September 2018, and returned to work on March 10, 2020. She worked from March 10 to March 13, 2020, when she was suddenly laid off due to COVID-19. The employer issued a record of employment (ROE) dated March 23, 2020, which states the Claimant had worked 30 hours.

[15] The Claimant confirmed at the General Division hearing that her work in March 2020, was her only employment since September 2018. She agreed with the 30 hours stated on her ROE and said she had no further hours in her qualifying period.

[16] Even if the temporary measures to facilitate access to benefits apply to the Claimant, increasing her insurable employment hours to 510 hours, she still does not meet the required 600 hours to qualify for maternity and parental benefits.

[17] As stated by the General Division, the requirement of the EI Act does not allow any discrepancy and provides no discretion to the Tribunal. Neither the General Division nor the Appeal Division can circumvent, rewrite or ignore the law, even in the interest of compassion.

[18] After reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Claimant in support of her application for leave to

appeal, I find that the appeal has no reasonable chance of success. The Claimant has not set out a reason that 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:	F. F., Self-represented
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