



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *PM v Canada Employment Insurance Commission*, 2020 SST 1072

Tribunal File Number: AD-20-753

BETWEEN:

P. M.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: December 18, 2020

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant (Claimant) made a claim for benefits effective November 10, 2019. The Respondent, the Canada Employment Insurance Commission (Commission), determined that the Claimant did not have enough hours to establish his claim for benefits because of a notice of violation in his file.

[3] The Applicant challenged the notice of violation. However, the Commission did not reconsider the issue of the notice of violation because the Claimant's reconsideration request was late. The Claimant appealed the Commission's decision to the General Division.

[4] The General Division allowed the Claimant's appeal on the issue of the late reconsideration of the notice of violation. However, it dismissed the Claimant's appeal on the benefit period issue because he had only 917 insurable hours of employment when he needed 1,400 given the notice of violation on file.

[5] The Claimant now seeks leave to appeal the General Division's decision. He argues that the General Division made an error by requiring such a large number of insurable hours of employment.

[6] I placed the Claimant's application for leave to appeal in abeyance pending the Commission's reconsideration decision on the notice of violation. The Commission then decided to cancel the notice of violation in the Claimant's file.

[7] Following the cancellation of the notice of violation, the Claimant filed an application to amend or rescind the General Division's decision under section 66 of the *Department of Employment and Social Development Act* (DESD Act).

[8] On November 6, 2020, the General Division amended its decision. It found that the Claimant had enough hours to establish a claim for Employment Insurance benefits on November 10, 2019.

[9] On December 4, 2020, the Commission confirmed that the Claimant received Employment Insurance benefits following the General Division's decision of November 6, 2020.

[10] I must therefore decide whether there is an arguable case that the General Division made a reviewable error based on which the appeal has a reasonable chance of success.

[11] I am refusing leave to appeal because the Claimant has not raised a ground of appeal based on which the appeal has a reasonable chance of success.

ISSUE

[12] Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

ANALYSIS

[13] 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 made in a perverse or capricious manner or without regard for the material before it.

[14] 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 at the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove his case; he must instead establish that the appeal has a reasonable chance of success. In other words, he must show that there is arguably a reviewable error based on which the appeal might succeed.

[15] I will grant leave to appeal if I am satisfied that at least one of the Claimant's stated grounds of appeal gives the appeal a reasonable chance of success.

Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

[16] In support of his application for leave to appeal, the Claimant argues that the General Division made an error by requiring such a large number of insurable hours of employment.

[17] The General Division allowed the Claimant's appeal on the issue of the late reconsideration of the notice of violation. However, it dismissed the Claimant's appeal on the benefit period issue because he had only 917 insurable hours of employment when he needed 1,400 given the notice of violation on file.

[18] In response to the General Division's initial decision, the Commission cancelled the notice of violation in the Claimant's file.

[19] The Claimant then filed an application to amend or rescind the General Division's initial decision under section 66 of the DESD Act.

[20] On November 6, 2020, the General Division amended its initial decision. It found that the Claimant had enough hours to establish a claim for Employment Insurance benefits on November 10, 2019.

[21] At my request, the Commission confirmed that the Claimant received Employment Insurance benefits following the General Division's decision of November 6, 2020.

[22] I note that the Claimant's appeal is now moot. He has not raised any issue of fact, law, or jurisdiction that could justify setting aside the decision under review.

[23] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for leave to appeal, I have no choice but to find that the appeal has no reasonable chance of success.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVES:	R. M., Representative for the Applicant Josée Lachance, Representative for the Respondent
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