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

Citation: *ZA v Canada Employment Insurance Commission*, 2020 SST 1080

Tribunal File Number: AD-20-867

BETWEEN:

Z. A.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: December 23, 2020

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Claimant left his employment at the end of January 2019 and applied for regular benefits. The Commission did not accept his claim to establish a benefit period because the Claimant did not have enough insurable hours of employment. When the Claimant asked the Commission to reconsider, it did not change its decision.

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

[4] The Claimant has no reasonable chance of success. He has not made out an arguable case that the General Division made an error of jurisdiction or an important error of fact.

PRELIMINARY MATTERS

[5] In his submissions to the Appeal Division, the Claimant included information about his hours of work and the nature of his employment.[1] Some of this was new evidence that was not available to the General Division.

[6] I will not be considering any new evidence from the Claimant's submissions. The Federal Court of Appeal has repeatedly confirmed that the Appeal Division may not consider new evidence.[2]

WHAT GROUNDS CAN I CONSIDER FOR THE APPEAL?

[7] 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

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[1] AD1.
[2] *Parchment v Canada (Attorney General)*, 2017 FC 354; *Marcia v. Canada (AG)*, 2016 FC 1367. There are certain exceptions but none applies here.

chance of success means that there is an arguable case. This would be some argument that the Claimant could make and possibly win.[3]

[8] "Grounds of appeal," means reasons for appealing. I am only allowed to consider whether the General Division made one of these types of errors:[4]

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

ISSUES

[9] Is there an arguable case that the General Division made an error by failing to consider whether the Claimant qualified for sickness benefits?

[10] Is there an arguable case that the General Division ignored or misunderstood evidence about his insurable hours?

ANALYSIS

[11] A claimant can only qualify to receive Employment Insurance benefits if he or she can show that they have worked enough hours of insurable employment within a certain timeframe.[5] This timeframe is called the qualifying period. For regular benefits, the required number of hours depends on the regional rate of unemployment in a claimant's economic region.[6] For special benefits, including sickness benefits, claimants must show that they have a minimum of 600

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[3] 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.
[4] 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.*
[5] *Employment Insurance Act* (EI Act), section 7(1).
[6] EI Act, section 7(2).

hours of insurable employment.[7] Claimants with less than 600 hours do not qualify for sickness benefits.[8]

Issue 1: Consideration of Special Benefits

[12] The Claimant argued that the General Division made an error of law because it analyzed his claim as a claim for regular benefits. He says that he quit his job for medical reasons and that the General Division should have considered whether he qualified for sickness benefits.

[13] The General Division understood that the Claimant wanted it to decide whether he had sufficient hours of insurable employment to qualify for sickness benefits. However, the General Division decided that it only had the power to decide if the Claimant enough hours for regular benefits. The Claimant is really arguing that the General Division made an error by refusing to exercise its jurisdiction.

[14] There is no arguable case that the General Division made either an error of law or an error of jurisdiction by refusing to consider whether the Claimant qualified for sickness benefits.

[15] Only reconsideration decisions may be appealed to the General Division.[9] And the General Division can consider only those issues that arise from the decision on appeal. The Claimant applied for regular benefits and received a decision denying regular benefits. The decision did not consider whether the Claimant could have qualified for sickness benefits.

[16] The Commission's reconsideration decision confirmed its initial decision that the Claimant did not qualify for regular benefits, and the Claimant appealed. Therefore, the only issue that the General Division could decide was whether the Claimant was qualified for **regular** benefits.

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[7] *Employment Insurance Regulations*, section 93(1)(b),
[8] EI Act, section 6(1) (definition of minor attachment claimant); also see section 21(1).
[9] EI Act, sections 112, 113.

Issue 2: Evidence of Insurable Hours

[17] The Claimant has not disagreed with how the Commission determined his qualifying period. He has not disputed the Commission's finding that he would require 665 insurable hours to qualify in his economic region.

[18] The Claimant now argues that the General Division made an important error of fact when it found that he had only 561 hours of insurable employment. However, this was not his position in his appeal to the General Division. The Claimant said in his notice of appeal that he had only been able to work 561 hours before he became sick and quit.[10] He said the same thing in his testimony to the General Division.[11] This was consistent with what he had written earlier in his reconsideration application.[12]

[19] There is no arguable case that the General Division ignored or misunderstood any of this evidence.

[20] The Claimant has asked that I consider hours of vacation time as hours of insurable employment. He has also calculated additional hours from the "other income" in his tax return. The Claimant also referred to a policy of the Canada Revenue Agency (CRA), which states that it may credit an employee up to 35 hours of insurable employment for each week, if the employee is restricted by law to working fewer than 35 hours per week. The Claimant says that this policy applies to him. He claims that he was not permitted to work more than 29.5 hours per week because he was an employee in the health sector.

[21] However, the Claimant did not submit any evidence of additional hours to the General Division. If the evidence was not before the General Division, I cannot consider it.

[22] Even if the Claimant had made the argument to the General Division that his hours of insurable employment should be calculated differently, the General Division would not have had

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[10] GD2-5.
[11] Audio record of the General Division hearing at timestamp 00:12:02; 00:12:24, and 00:13:45.
[12] GD3-29.

the authority to make changes to his insurable employment. Only CRA can decide what should be included in the "hours of insurable employment," for the purpose of the EI Act.[13]

[23] The Claimant has no reasonable chance of success in this appeal.

[24] I understand that the Claimant feels that the General Division decision was unfair because he was sick when he left work and he had almost enough hours to qualify for sickness benefits. However, the General Division was required to apply the law as it is written. It could not have found that the Claimant qualified for sickness benefits when the Commission had not made a decision on sickness benefits. And it could not have decided that he should receive any benefit without the number of hours of insurable employment required for that benefit.

CONCLUSION

[25] The application is refused.

[26] This decision does not prevent the Claimant from asking the Commission for another decision on whether he qualified for special benefits, if it has not done so by now. However, he would still need to show that he had a minimum of 600 insurable hours. The Claimant may need to ask CRA for a ruling on how many insurable hours he had in total.

Stephen Bergen
Member, Appeal Division

REPRESENTATIVES:	Z. A., Self-represented

[13] *Canada (Attorney general) v Romano*, 2008 FCA 117, *Canada (Attorney general) v Didiodato*, 2002 FCA 34, *Canada (Attorney general) v. Haberman*, 2000 FCA 150.