



Citation: *MM v Canada Employment Insurance Commission*, 2021 SST 680

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: M. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated November 5, 2021
(GE-21-1961)

Tribunal member: Pierre Lafontaine

Decision date: November 17, 2021

File number: AD-21-373

Decision

[1] Leave to appeal is refused. This means the appeal will not proceed.

Overview

[2] The Applicant (Claimant) applied for Employment Insurance (EI) benefits, but the Respondent, the Canada Employment Insurance Commission (Commission), decided that the Claimant had not worked enough hours to qualify. The Commission determined that the Claimant had zero hours during the qualifying period but needed 420 hours to qualify. Upon reconsideration, the Commission maintained its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[3] The General Division found that the Claimant did not qualify for an extension of the benefit period following a previous benefit period effective October 4, 2020. It found that the Claimant needed 420 hours to qualify but that he did not work in his qualifying period. The General Division concluded that he did not have enough hours to qualify for benefits.

[4] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. He submits that the General Division ignored that he was forced to submit a new application for benefits and that he was eligible for an extension of the prior benefit period, because of injury, workplace harassment, and quarantine.

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

[6] I am refusing leave to appeal because the Claimant's appeal has no reasonable chance of success.

Issue

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

Analysis

[8] 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:

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.

[9] 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.

[10] Therefore, before I can grant leave, I need 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?

[11] In support of his application for leave to appeal, the Claimant submits that the General Division ignored that he was forced to submit a new application for benefits and that he was eligible for an extension of the prior benefit period, because of injury, workplace harassment, and quarantine.

[12] The General Division had to decide whether the Claimant has sufficient hours of insured employment to establish a claim for **regular benefits** on September 20, 2021.

[13] The Claimant's qualifying period was established from October 4, 2020, to September 18, 2021, because the Claimant qualified for a previous benefit period effective October 4, 2020.¹ He needed 420 hours in his qualifying period.² The Claimant declared that he did not work during the qualifying period because of Covid-19 and school attendance. Therefore, he did not have enough hours to qualify for regular benefits.

[14] As correctly stated by the General Division, because the Claimant is deemed to have received the additional 300 insurable hours for his October 4, 2020, claim, he cannot get the additional hours for another benefit period to start in September 2021.³ Even if the Claimant was entitled to receive the one-time credit of 300 insurable hours, he would still not have enough hours to qualify for regular benefits.

[15] I note that the General Division did consider whether the Claimant's benefits from the previous claim could be extended under the law. It found that he did not qualify for a benefit period extension because he did not meet any of the specific reasons listed in the law.⁴

[16] In particular, the Claimant presented no evidence to the General Division demonstrating that he was in receipt of workers' compensation payments for an illness or injury that would allow an extension of the benefit period.

¹ See section 8(1)(b) of the EI Act

² See section 7 and 153.16 of the EI Act.

³ Section 153.17(1) (b) of the EI Act.

⁴ See section 10(10) of the EI Act.

[17] After reviewing the appeal docket and the General Division's decision as well as considering the Claimant's arguments 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.

Conclusion

[18] Leave to appeal is refused. This means the appeal will not proceed.

Pierre Lafontaine
Member, Appeal Division