



Citation: *AA v Canada Employment Insurance Commission*, 2022 SST 89

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

**Applicant:** A. A.

**Respondent:** Canada Employment Insurance Commission

---

**Decision under appeal:** General Division decision dated December 17, 2021  
(GE-21-2317)

---

**Tribunal member:** Janet Lew

**Decision date:** February 21, 2022

**File number:** AD-22-43

## Decision

[1] Leave (permission) to appeal is refused. The appeal will not be going ahead.

## Overview

[2] The Applicant, A. A. (Claimant), is appealing the General Division decision. The General Division found that benefits she received under the Quebec Pension Plan were “earnings” for the purposes of the *Employment Insurance Act*. Because they were earnings, the General Division also found that the pension had to be allocated (deducted from benefits).

[3] The Claimant argues that the General Division overlooked an important fact.

[4] Before the Claimant can move ahead with her appeal, I have to decide whether the appeal has a reasonable chance of success.<sup>1</sup> Having a reasonable chance of success is the same thing as having an arguable case.<sup>2</sup> If the appeal does not have a reasonable chance of success, this ends the matter.

[5] I am not satisfied that the appeal has a reasonable chance of success. Therefore, I am not giving permission to the Claimant to move ahead with her appeal.

## Issue

[6] Is there an arguable case that the General Division overlooked an important fact regarding the Claimant’s claim?

---

<sup>1</sup> Under section 58(1) of the *Department of Employment and Social Development Act* (DESD Act), I am required to refuse permission if am satisfied, “that the appeal has no reasonable chance of success.”

<sup>2</sup> See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

## Analysis

[7] The Appeal Division must grant permission to appeal unless the appeal has no reasonable chance of success. A reasonable chance of success exists if there is a possible jurisdictional, procedural, legal, or certain type of factual error.<sup>3</sup>

[8] Once an applicant gets permission from the Appeal Division, they move to the actual appeal. There, the Appeal Division decides whether the General Division made an error. If it decides that the General Division made an error, then it decides how to fix that error.

### **Is there an arguable case that the General Division overlooked an important fact regarding the Claimant's claim?**

[9] The Claimant argues that the General Division failed to consider the following statement from the Respondent, the Canada Employment Insurance Commission:

... if [the Claimant] qualifies for a new claim in the future [Quebec Pension Plan benefits] will be exempted as earnings on that new claim. If [the Claimant] accumulates the required hours to start a new claim after July 28, 2021, the start date of her pension, she would be considered a requalifier and these particular earnings would be exempt. Each pension would be considered separately though.<sup>4</sup>

[10] The Claimant argues that, as she filed her claim on September 26, 2021,<sup>5</sup> it was new. She argues that, because her claim was new, she should be considered a “requalifier” and her earnings from the Quebec Pension Plan should be exempt.

---

<sup>3</sup> See section 58(1) of the DESD Act. For factual errors, the General Division had to have based its decision on an error that was made in a perverse or capricious manner, or without regard for the evidence before it.

<sup>4</sup> See Supplementary Record of Claim, dated October 27, 2021, at page GD3-20.

<sup>5</sup> See Claimant's application for Employment Insurance benefits, at page GD3-11.

[11] In her appeal to the Appeal Division, the Claimant wrote:

My claim covers the period starting September 9, 2020 to June 17, 2021 where I have accumulated enough earnings to start a new claim. I would therefore, according to your document, be considered a re-qualifier and these particular earnings would be exempt from the amount of \$169.00 that is applied against my weekly benefits.<sup>6</sup>

[12] The General Division did in fact consider whether the Claimant's income was exempt as earnings. In particular, the General Division examined whether section 35(7)(e)(ii) of the *Employment Insurance Regulations* applied. Section 35(7) excludes certain types of income as earnings.

[13] Under the section, the income from insurable hours needed to establish a benefit period accumulated "after the date on which those moneys became payable and during the period in respect of which they received those moneys"<sup>7</sup> would be excluded as earnings. Or, in other words, one has to look at when the pension becomes payable. Income accumulated after this date is exempt.

[14] Conversely, income from insurable hours accumulated before the pension is payable would be considered earnings. These earnings would be subject to being allocated. These earnings have to be deducted against any benefits.

[15] The General Division found that the Claimant accumulated hours of insurable employment during the 2020 to 2021 school year.<sup>8</sup> The Claimant worked for the school board from September 9, 2020 to June 17, 2021. She accumulated insurable hours during this timeframe.<sup>9</sup>

---

<sup>6</sup> See Claimant's Application to the Appeal Division/letter dated January 14, 2022, at AD1-8.

<sup>7</sup> See section 35(7)(e)(ii) of the *Employment Insurance Regulations*.

<sup>8</sup> See General Division decision, at para14. The General Division referred to the school year because the Claimant worked for the school board.

<sup>9</sup> The Claimant worked for the school board from September 9, 2020 to June 17, 2021. See Claimant's Application to the Appeal Division, at page GD3-11.

[16] The General Division found that the Claimant accumulated these hours before the pension benefits became payable on July 28, 2021. This was the only logical conclusion it could have drawn.

[17] The General Division also concluded that only the hours that the Claimant accumulated during the current school year would allow her to take advantage of the exemption. She would be both accumulating insurable hours of employment and receiving her pension.

[18] The Claimant argues that the General Division did not consider the Commission's statement that monies would be exempted. But, it is clear that the General Division considered the issue and more importantly, properly interpreted and applied the section. The General Division appropriately concluded that the Claimant's income from September 2020 to June 2021 did not qualify for the exemption.

[19] To be exempt from earnings, any insurable hours had to be accumulated after the date that the pension payments became payable. The evidence here showed that the hours were accumulated before the pension became payable. So, no exemption was available to the Claimant under these circumstances.

[20] The Claimant does not otherwise argue that the General Division overlooked any other facts or that it made any errors in law. The General Division's findings were consistent with the evidence before it. Its interpretation and application of the *Employment Insurance Regulations* were sound.

## **Conclusion**

[21] Permission to appeal is refused because the appeal does not have a reasonable chance of success. This means that the appeal will not be going ahead.

Janet Lew  
Member, Appeal Division