



Citation: *TD v Canada Employment Insurance Commission*, 2022 SST 125

## Social Security Tribunal of Canada Appeal Division

# Leave to Appeal Decision

<b>Applicant:</b>	T. D.
<b>Respondent:</b>	Canada Employment Insurance Commission
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<b>Decision under appeal:</b>	General Division decision dated December 14, 2021 (GE-21-2065)
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<b>Tribunal member:</b>	Pierre Lafontaine
<b>Decision date:</b>	March 7, 2022
<b>File number:</b>	AD-22-36

## **Decision**

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

## **Overview**

[2] The Applicant (Claimant) works in the retail industry. Her employer laid her off due to the pandemic. She returned to work twice and her employer laid her off again twice. The Claimant's doctor told her not to return to work due to pregnancy-related illness. She received sickness benefits. The Claimant then applied for maternity and parental benefits.

[3] The Respondent (Commission) determined that because it paid the Claimant a combination of regular and special employment insurance (EI) benefits, her benefit period ends once they have paid her 50 weeks of benefits or the end date of her claim, whichever comes first.

[4] The Claimant argued that the pandemic affected her job, but she worked as much as she could. She said that she applied for maternity and parental benefits before the end of September 2021 to get a credit of insurable hours as discussed with Service Canada. After reconsideration, the Commission refused her request for a credit of insurable hours. The Claimant appealed the reconsideration decision to the General Division.

[5] The General Division found that the Claimant was entitled to a maximum of 50 weeks of benefits. It also found that the Commission correctly applied a one-time credit of 300 hours of insurable employment to her previous claim. She therefore could not benefit from a credit of 480 insurable hours to start a new claim and receive 35 weeks of parental benefits. The General Division concluded that the Claimant was not entitled to parental benefits beyond December 11, 2021.

[6] The Claimant seeks leave to appeal of the General Division's decision to the Appeal Division. She submits that due to COVID, she cannot earn hours again. She puts forward that the Government should put something in place to help in this kind of situation.

[7] I sent a letter to the Claimant requesting that she explain in detail her grounds of appeal. The Claimant did not reply within the allowed time.

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

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

## **Issue**

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

## **Analysis**

[11] 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.

[12] 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.

[13] 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?**

[14] In support of her application for leave to appeal, the Claimant submits that due to COVID, she cannot earn hours again. She puts forward that the Government should put something in place for this kind of situation.

[15] The evidence shows that the Claimant made an initial claim for regular benefits on December 23, 2020. The Commission executed the request for entitlement and established an initial benefit period, effective December 20, 2020. On August 27, 2021, the Claimant submitted an application for maternity benefits. The Commission renewed her claim for maternity benefits effective August 15, 2021.

[16] Unfortunately, only a maximum of 50 weeks of benefits can be paid when regular and special benefits are combined. In the Claimant's situation, her benefit period would end once 50 weeks have been paid, or the end date of the claim itself on December 18, 2021.

[17] Can the Claimant establish a new claim? The law indicates that a claimant who makes an initial claim for benefits on or after September 27, 2020, or in relation to an interruption of earnings that occurs on or after that date, is deemed

to have in their qualifying period an additional 480 hours of insurable employment.<sup>1</sup>

[18] The law does not provide an option to apply the additional hours to a future claim when the claimant establishes sufficient hours within the qualifying period to meet the entry rate to qualify for benefits without the credit of hours.

[19] The Claimant's one-time credit of hours was applied to the qualifying period of her December 23, 2020 claim. As such, it is not available for use to qualify on a subsequent claim for EI benefits.

[20] Despite my sympathy for the Claimant, the General Division could not have granted her request to carry forward the one-time credit of hours without committing an error of law. Neither the General Division nor the Appeal Division has the authority to deviate from the rules Parliament established for granting benefits.

[21] I find that the Claimant has not raised any issue of fact, law, or jurisdiction that could justify setting aside the decision under review.

[22] 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**

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

Pierre Lafontaine  
Member, Appeal Division

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<sup>1</sup> Section 153.17(1) (a) of the *Employment Insurance Act*.