



[TRANSLATION]

Citation: *FM v Canada Employment Insurance Commission*, 2022 SST 405

**Social Security Tribunal of Canada
Appeal Division**

Leave to Appeal Decision

Applicant: F. M.
Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated
February 1, 2022 (GE-21-2518)

Tribunal member: Jude Samson
Decision date: May 19, 2022
File number: AD-22-85

Decision

[1] Permission (leave) to appeal is refused. The appeal won't proceed.

Overview

[2] F. M. is the Claimant in this case. He applied for Employment Insurance (EI) regular benefits. The Canada Employment Insurance Commission (Commission) refused his application, saying that he didn't have enough hours of insurable employment.

[3] As a result, the Claimant applied to have his application for benefits treated as though it had been made earlier. If this application had been approved, this would have given the Claimant the hours he needed to qualify for benefits. However, the Commission also refused this second application from the Claimant.

[4] The Claimant appealed the Commission's decisions to the Tribunal's General Division, but it dismissed his appeal. The Claimant now wants to appeal the General Division decision to the Appeal Division. Before the case can move forward, I must first decide whether to give permission to appeal.

[5] I have found that the Claimant's appeal has no reasonable chance of success. I have no choice, then, but to refuse permission to appeal.

Issue

[6] In this decision, the issue before me is this: Has the Claimant raised an arguable case on which the appeal might succeed?

Analysis

[7] Appeal Division files follow a two-step process. This appeal is at step one: permission to appeal.

[8] The legal test that the Claimant needs to meet at this step is low: Has he raised an arguable case on which the appeal might succeed?¹ If the appeal has no reasonable chance of success, then I must refuse permission to appeal.²

The Claimant hasn't raised an error based on which the appeal might succeed

[9] To qualify for EI benefits, you need to have worked enough hours during the qualifying period.³ Normally, the qualifying period is the 52 weeks before the start of the benefit period.

[10] In this case, the Claimant's employer cut his position in December 2019. However, the employer paid the Claimant severance pay for 23 months' salary.

[11] The Claimant was under the impression that he would have committed fraud by applying for EI benefits while receiving pay from his employer. As a result, the Claimant waited until August 2021 before applying for benefits.

[12] In its decision, the General Division made the following findings:

- Given the date he applied for benefits, the Claimant needs 420 hours of insurable employment in his qualifying period.⁴
- The Claimant didn't work during his qualifying period. This means that he doesn't have any hours.⁵
- The Claimant's application for benefits can't be treated as though it was made earlier, since he didn't take reasonably prompt steps to contact the

¹ See *Osaj v Canada (Attorney General)*, 2016 FC 115; and *Ingram v Canada (Attorney General)*, 2017 FC 259.

² This is the legal test described in section 58(2) of the *Department of Employment and Social Development Act* (DESD Act).

³ See section 7 of the *Employment Insurance Act*.

⁴ See paragraphs 12 to 14 of the General Division decision.

⁵ See paragraphs 15 and 16 of the General Division decision.

Commission to learn about his rights and obligations. He could not have assumed that his claim would be fraudulent.⁶

[13] The Appeal Division can intervene in a case only if the General Division made an error set out in the law.⁷

[14] However, in his notice of appeal, the Claimant just repeats the same arguments that were already considered by the General Division. Specifically, the Claimant argues that he is entitled to EI benefits because he worked for the same company for 33 years and his position was cut.⁸ In addition, he didn't apply sooner because he was receiving pay and didn't want to commit fraud.

[15] The Tribunal asked the Claimant for more information on the reasons for his appeal.⁹ But the Applicant simply repeated the same arguments again.¹⁰

[16] In his documents, the Claimant doesn't specify what error the General Division may have made. Without a possible error related to those set out in the law, the Claimant's appeal has no reasonable chance of success. It is bound to fail.

[17] Regardless of this finding, I can't just look at the specific ground of appeal that the Applicant has raised.¹¹ So, I have reviewed the documents on file and the decision under appeal and listened to the audio recording of the General Division hearing. But I haven't noted other reasons to give permission to appeal.

⁶ See paragraphs 28 to 32 of the General Division decision.

⁷ These errors (or "grounds of appeal") are listed under section 58(1) of the DESD Act.

⁸ See AD1-4.

⁹ The Tribunal's letter is dated March 1, 2022.

¹⁰ See AD3.

¹¹ The Federal Court has said that I must do this in *Griffin v Canada (Attorney General)*, 2016 FC 874; and *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

Conclusion

[18] I have decided that the Claimant's appeal has no reasonable chance of success. I have no choice, then, but to refuse permission to appeal. This means that the appeal won't proceed.

Jude Samson
Member, Appeal Division