



[TRANSLATION]

Citation: *ER v Canada Employment Insurance Commission*, 2022 SST 469

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: E. R.
Representative: Jonathan Beaulieu Richard

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated
April 7, 2022 (GE-22-608)

Tribunal member: Pierre Lafontaine

Decision date: June 6, 2022
File number: AD-22-302

Decision

[1] Leave (permission) to appeal is refused. The appeal will not proceed.

Overview

[2] The Respondent (Commission) decided that the Claimant had not worked enough hours since her last benefit period to qualify for family caregiver benefits. The Claimant requested a reconsideration of that decision, but the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[3] The General Division found that the Claimant's qualifying period went from September 6, 2020, to September 4, 2021, because a period of parental leave had been established earlier as of June 14, 2020. It found that the Claimant had worked 42 hours during her qualifying period. The General Division decided that the Claimant had not shown that she had worked enough hours to qualify for family caregiver benefits, specifically 600 or more hours.

[4] The Claimant seeks leave from the Appeal Division to appeal the General Division decision. She argues that the General Division made an error by failing to exercise its discretion so that she can qualify.

[5] I have to decide whether there is an arguable case that the General Division made a reviewable error based on which the appeal has a reasonable chance of success.

[6] I am refusing leave to appeal because the Claimant has not raised a ground of appeal based on which the appeal has a reasonable chance of success.

Issue

[7] Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

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 the following:

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 at the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove her case; she must instead establish that the appeal has a reasonable chance of success. In other words, she must show that there is arguably a reviewable error based on which the appeal might succeed.

[10] I will grant leave to appeal if I am satisfied that at least one of the Claimant's stated grounds of appeal gives the appeal a reasonable chance of success.

Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

[11] The Claimant argues that the General Division made an error by failing to exercise its discretion in accordance with fundamental Canadian values, particularly those enshrined in the *Canadian Charter of Rights and Freedoms*.¹

[12] Before the General Division, the Claimant did not dispute the Commission's decision about her qualifying period. She did not dispute that she had worked 42 hours

¹ *Baker v Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817 at para 65

during her qualifying period. The Claimant did not prove that she had enough hours to qualify for family caregiver benefits because she needed 600 or more hours, but had 42 hours. She did not qualify with the additional 300 hours provided for by law.

[13] I see that, before the General Division, the Claimant chose not to file a constitutional challenge. It is well established that, except in cases of urgency, constitutional questions cannot be raised for the first time before the Appeal Division.²

[14] The Claimant alleges that the General Division failed to exercise its discretion in accordance with fundamental Canadian values.

[15] Although I sympathize greatly with the Claimant's situation, the law unfortunately does not allow any discrepancy and gives the Tribunal **no discretion** to make it possible for the Claimant to qualify.³

[16] In other words, the law gives the Tribunal no discretion to fix the defect in the Claimant's claim.

[17] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for leave to appeal, I am of the view that the appeal has no reasonable chance of success. The Claimant has not raised any question that could justify setting aside the decision under review.

Conclusion

[18] Leave to appeal is refused. The appeal will not proceed.

Pierre Lafontaine
Member, Appeal Division

² In this case, there is no urgency that would justify departing from the general rule; there is no doubt that the General Division had the power and capability to decide a Charter issue: *Okwuobi v Lester B. Pearson School Board; Casimir v Quebec (Attorney General); Zorrilla v Quebec (Attorney General)*, 2005 SCC 16, [2005] 1 SCR 257.

³ *Canada (Attorney General) v Lévesque*, 2001 FCA 304