



Citation: *SA v Canada Employment Insurance Commission*, 2022 SST 311

**Social Security Tribunal of Canada
Appeal Division**

Leave to Appeal Decision

Applicant: S. A.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated January 31, 2022
(GE-22-5)

Tribunal member: Charlotte McQuade

Decision date: April 29, 2022

File number: AD-22-165

Decision

[1] I am refusing permission (leave) to appeal. The appeal won't proceed.

Overview

[2] S. A. is the Claimant. He was laid off from his job on January 31, 2019. He applied for Employment Insurance (EI) regular benefits on September 21, 2021. The Canada Employment Insurance Commission (Commission) decided that the Claimant didn't have enough hours of insurable employment (hours) to qualify for benefits.

[3] The Claimant appealed the Commission's decision to the Tribunal's General Decision. He asked the General Division to count the hours from before his layoff. He also asked the General Division to review a negative decision from the Commission about an earlier claim for benefits he had made in 2020.

[4] The General Decision decided that the Claimant hadn't proven that he had the needed 420 hours to qualify for benefits. It also decided he could not use the hours from before his layoff to help him qualify, since they fell outside his qualifying period. The General Division decided it didn't have the authority to review the Commission's decision about the Claimant's 2020 claim for benefits. It said it could only decide whether the Claimant qualified for benefits based on his September 21, 2021, claim.

[5] The Claimant asks for permission to appeal the General Division's decision. He argues the General Division made an important error of fact because it didn't determine his qualifying period based on his earlier claim for benefits. He also argues that the General Division made an important error of fact because it didn't consider the hours from before his layoff on January 31, 2019.

[6] I am refusing permission to appeal because I am satisfied the Claimant's appeal has no reasonable chance of success. This means the Claimant's appeal ends here.

Issues

- [7] The Claimant's application to the Appeal Division raises the following issues:
- a) Is it arguable that the General Division made an error of law when it didn't consider the hours from before the Claimant's layoff?
 - b) Is it arguable that the General Division made an error of jurisdiction when it refused to review the Commission's decision about a claim the Claimant had made in 2020?

Analysis

[8] The Appeal Division has a two-step process. First, the Claimant needs permission to appeal. If permission is denied, the appeal stops there. If permission is given, the appeal moves on to step two. The second step is where the merits of the appeal are decided.

[9] I have to refuse permission to appeal if I am satisfied that the appeal has no reasonable chance of success.¹ The law says that I can consider only certain types of errors.² A reasonable chance of success means there is an arguable case that the General Division may have made at least one of those errors.³

[10] Although the Claimant refers to the General Division's possible errors as important errors of fact, I think they are better described as a possible error of law and a possible error of jurisdiction. I can consider these kinds of errors.

¹ Section 58(2) of the *Department of Employment and Social Development Act* (DESD Act) says that this is the test I have to apply.

² Section 58(1) of the DESD Act describes the only errors that I can consider when deciding whether to give permission to appeal. These errors are that the General Division breached natural justice, made an error of jurisdiction, made an error of law, or based its decision on an important error of fact.

³ See *Osaj v Canada (Attorney General)*, 2016 FC 115, which describes what a "reasonable chance of success" means.

It isn't arguable that the General Division made an error of law

[11] It isn't arguable that the General Division made an error of law when it overlooked the hours from before the Claimant's layoff on January 31, 2019.

[12] To qualify for EI regular benefits, you need to have worked enough hours within a certain time frame.⁴ This time frame is called the "qualifying period."⁵

[13] Generally, the qualifying period is the 52-week period immediately before the beginning of a benefit period.⁶

[14] The benefit period is the period in which a claimant receives benefits. It begins on the Sunday of the week in which the interruption of earnings occurs or the Sunday of the week in which the initial claim for benefits is made, whichever is later.⁷

[15] There was no dispute that the Claimant was laid off on January 31, 2019, and he applied for regular benefits on September 21, 2021.⁸ There was also no dispute that he hadn't worked or earned any hours since January 31, 2019.

[16] Based on those facts, the General Division correctly determined that the Claimant's benefit period would have begun on September 19, 2021.

[17] The General Division also correctly determined that the Claimant's qualifying period was the 52-week period before September 19, 2021, from September 20, 2020, to September 18, 2021.

[18] Before the General Division, there was no dispute that the Claimant resided in the EI economic region of Toronto or that the unemployment rate there was 13.1% the week the Claimant's benefit period would have begun.

⁴ See section 7 of the *Employment Insurance Act* (EI Act).

⁵ See section 7(2)(b) of the EI Act and section 17 of the *Employment Insurance Regulations*.

⁶ See section 8(1) of the EI Act. It could be less than 52 weeks if a claimant had an immediately preceding benefit period.

⁷ See section 10(1) of the EI Act.

⁸ See GD3-14.

[19] This means that the Claimant needed at least 420 hours of insurable employment in his qualifying period from September 20, 2020, to September 18, 2021.⁹

[20] The General Division decided the Claimant didn't have the required 420 hours to qualify for benefits because he hadn't worked or earned any hours during his qualifying period.

[21] As a temporary pandemic measure, claimants were given a one-time credit of hours if they made an initial claim between September 27, 2020, and September 25, 2021, or made a claim in relation to an interruption of earnings in that period. There was a credit of 300 hours for claims for regular benefits.¹⁰ Since the Claimant's benefit period would have begun on September 19, 2021, he potentially would have qualified for a credit of 300 hours.

[22] The General Division didn't acknowledge the possible credit of 300 hours in its decision. However, there was no dispute that the Claimant hadn't worked since January 31, 2019, or earned any hours during his qualifying period from September 20, 2020, to September 18, 2021. So, even with a credit of 300 hours, the Claimant still would not have had the required 420 hours to qualify for benefits.

[23] The Claimant argues that the General Division made an error of law by not considering the hours from before his layoff on January 31, 2019.

[24] It isn't arguable that the General Division made an error of law in failing to consider hours from before the layoff. The law is clear that a claimant can't use hours of insurable employment earned outside a qualifying period to qualify for benefits.¹¹ Any hours earned before January 31, 2019, were outside the Claimant's qualifying period from September 20, 2020, to September 18, 2021.

⁹ See the version of section 7 of the EI Act, in force between July 3, 2016 and September 25, 2021, which set out the minimum number of hours needed to qualify for EI regular benefits, depending on different regional rates of unemployment.

¹⁰ Section 153.17(1) of the EI Act explains the increase in hours.

¹¹ Section 7(2) of the EI Act says the hours must be worked during the qualifying period. See also *Haile v Canada (Attorney General)*, 2008 FCA 193.

It isn't arguable that the General Division made an error of jurisdiction

[25] It isn't arguable that the General Division made an error of jurisdiction when it refused to review the Commission's decision about the Claimant's 2020 claim.

[26] If the General Division decided something it didn't have authority to decide, or it didn't decide something it should have decided, that is an error of jurisdiction.

[27] The Claimant told the General Division that he had applied for benefits at the end of 2019 or in early 2020 but was refused. He said he had asked the Commission to reconsider its decision but that he hadn't appealed that reconsideration decision to the Tribunal. He asked the General Division to also consider that reconsideration decision as part of his appeal.¹²

[28] The Claimant didn't provide this reconsideration decision to the Tribunal, and neither did the Commission.

[29] The General Division acknowledged the Claimant's 2020 claim but decided it had no jurisdiction over any earlier claim. The General Division decided that the only claim it could make a decision about was the September 21, 2021, claim.

[30] The Claimant argues that the General Division made an error when it didn't review the Commission's decision about his earlier claim. He says his qualifying period should have started before that earlier claim.

[31] The Tribunal's authority to review decisions comes from the *Employment Insurance Act* (EI Act). The EI Act says that the Tribunal can review only reconsideration decisions made by the Commission that are appealed to the Tribunal.¹³

[32] There are time limits for appeals. An appeal of a reconsideration decision about EI benefits must be made within 30 days after a decision is communicated to a claimant. The General Division can extend that time, but in no case may an appeal be

¹² See paragraph 7 of the General Division decision.

¹³ Sections 112 and 113 of the EI Act set out the Tribunal's authority to review reconsideration decisions made by the Commission.

brought more than one year after a decision is communicated to a claimant.¹⁴ A claimant can't avoid the time limits by adding an appeal of a reconsideration decision that may be out of time to a timely appeal of a reconsideration decision.

[33] The December 8, 2021, notes from the Commission's reconsideration agent confirm that the Claimant explained that his previous claim had been denied. The notes also say that he was told, "there were no hours in his previous qualifying period from March 15 2020 to March 17 2019 [sic]."¹⁵ No decision or reconsideration decision concerning that earlier claim was included in the Commission's file.

[34] It isn't entirely clear that the Commission made a reconsideration decision about that earlier claim. However, if it did, neither party provided it to the Tribunal. So, the General Division could consider only the December 8, 2021, reconsideration decision it had before it.

[35] The reconsideration decision of December 8, 2021, confirms the Commission's initial decision of October 27, 2021. The initial decision relates to the Claimant's September 21, 2021, claim for benefits. Specifically, it says that the Claimant had "0 hours of insurable employment between September 20, 2020 and September 18, 2021," but he needed 420 hours to qualify for benefits.¹⁶ There is no reference to any earlier claim for benefits.

[36] There is no arguable case that the Tribunal made a possible error of jurisdiction by overlooking the Commission's decision about the Claimant's 2020 claim. This is because the December 8, 2021, reconsideration decision doesn't explicitly or implicitly address any issues about that earlier claim.

¹⁴ Section 52 of the DESD Act sets out this rule.

¹⁵ GD3-31.

¹⁶ See GD3-24.

[37] I have reviewed the entire written record and listened to the recording of the hearing. I am satisfied that the General Division didn't misunderstand or ignore evidence that could have an impact on the outcome of this appeal.¹⁷

Conclusion

[38] I am refusing permission to appeal. This means that the appeal won't proceed.

Charlotte McQuade
Member, Appeal Division

¹⁷ See *Karadeolian v Canada (Attorney General)*, 2016 FC 615, which recommends doing such a review.