Citation: *JL v Canada Employment Insurance Commission*, 2022 SST 399

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	J. L.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated March 28, 2022 (GE-22-466)

Tribunal member:	Charlotte McQuade
Decision date:	May 18, 2022
File number:	AD-22-206

Decision

[1] I am refusing permission (leave) to appeal. The appeal will not proceed.

Overview

[2] J. L. is the Claimant. He stopped work on September 25, 2021. He applied for Employment Insurance (EI) regular benefits on September 27, 2021. At his employer's request, the Claimant returned to work for one day only, on September 29, 2021.

[3] As a temporary measure associated with the pandemic, the *Employment Insurance Act* (EI Act) was amended to provide a one-time credit of 300 hours of insurable employment for claimants of regular benefits.[1] This provision was in effect until September 25, 2021.[2]

[4] The Canada Employment Insurance Commission (Commission) decided that this provision only applied to benefit periods beginning before September 25, 2021, so it did not apply to the Claimant because his benefit period would have begun on September 26, 2021. The Commission decided that since the Claimant had only earned 200 hours in his qualifying period instead of the required 420 hours he could not be paid regular benefits.

[5] The Claimant appealed the Commission's decision to the Tribunal's General Division. The General Division decided that the Claimant's benefit period would have begun on September 26, 2021, after the credit provision had ceased to apply so the Claimant could not have the credit of 300 hours. The General Division decided the Claimant did not qualify for benefits, having earned less than the 420 hours needed to qualify.

[6] The Claimant is now asking for permission to appeal the General Division's decision. He submits that the General Division made an error of fact and an error of law.

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[1] See section 153.17 (1)(b) of the *Employment Insurance Act* (EI Act).
[2] See section 153.17 as it read prior to September 26, 2021. See also section 153.196 (1) of the EI Act which says that section 153.17 "ceases to apply" on September 25, 2021.

He says his employer told him his last day of work was September 25, 2021, so his claim should have been processed then. He also says he relied on misleading and incorrect information the Commission provided about the end date of the temporary measures. He says he would not have worked one more day if the correct information had been provided.

[7] I am refusing permission to appeal as I am satisfied the Claimant's appeal has no reasonable chance of success. This means the appeal stops here.

Issues

[8] The Claimant says in his Application to the Appeal Division that the General Division made an "important error of fact" and an "error of law." I am not limited to the Claimant's characterization of the possible errors.[3] I think the arguments the Claimant makes in the Application to the Appeal Division raise the following issues:

a) Is it arguable that the General Division made an error of law when it decided the Claimant's benefit period would have begun on September 26, 2021?

b) Is it arguable that the General Division misinterpreted whether section 153.17 (1)(b) of the EI Act applied to the Claimant?

c) Is it arguable that the General Division made an error of law when it decided the Claimant did not have enough hours of insurable employment to qualify for benefits?

[3] See *Griffin v Canada (Attorney General)*, 2016 FC 874. In that case, the Federal Court said the requirements of section 58(1), of the *Department of Employment and Social Development Act* (DESD Act), which describes the errors I can consider, should not be applied mechanically or in a perfunctory manner.

Analysis

[9] 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.

[10] I must refuse permission to appeal if I am satisfied that the appeal has no reasonable chance of success.[4] The law says that I can only consider certain types of errors.[5] A reasonable chance of success means there is an arguable case that the General Division may have made at least one of those errors.[6]

[11] This is a low bar. Meeting the test for leave to be granted does not mean the appeal will necessarily succeed.

The Claimant's benefit period was correctly determined

[12] The General Division did not make an error of law when it decided that the Claimant's benefit period would have begun on September 26, 2021.

[13] The law says that a benefit period begins on the later of (a) the Sunday of the week in which the interruption of earnings occurs, and (b) the Sunday of the week in which the initial claim for benefits is made.[7]

[14] There is no dispute that the Claimant applied for benefits on September 27, 2021.[8]

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[4] Section 58(2) of the DESD Act says this is the test I have to apply.
[5] Section 58(1) of the DESD Act describes the only errors that I can consider when deciding whether to give permission to proceed with an 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.
[6] See Osaj v Canada (Attorney General), 2016 FC 115, which describes what a "reasonable chance of success" means.
[7] See section 10(1) of the EI Act.
[8] GD3-13.

[15] An “initial claim for benefits” means a claim made for the purpose of establishing a claimant’s benefit period.[9] So, the Claimant’s initial claim for benefits was on September 27, 2021.

[16] The General Division decided the Claimant’s interruption of earnings started on September 29, 2021, which meant his benefit period would have begun on September 26, 2021.[10]

[17] The Claimant submits in his Application to the Appeal division that his last day of work was September 25, 2021, and the employer asked him to help out by working one more day of work. He says since his employer told him that his work ended on September 25, 2021, his claim should have been processed that day.

[18] I understand the Claimant to be arguing that General Division erred by deciding his interruption of earnings was on September 29, 2021, rather than September 25, 2021.

[19] The General Division’s decision about when the Claimant had an interruption of earnings was consistent with the evidence before it and the law.

[20] The Claimant noted in his application for EI benefits that his last day worked was September 25, 2021. The Record of Employment (ROE) on file from the employer shows the reason for issuance being a shortage of work/end of contract or season. The last day paid is noted as September 29, 2021.[11]

[21] The Claimant told the General Division that his employer told him his last day of work was September 25, 2021, and he only returned to work on September 29, 2021, as his employer asked him to help out for one more day.

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[9] See section 6(1) of the EI Act, which defines “initial claim for benefits.”
[10] See paragraph 24 of the General Division decision.
[11] GD3-15.

[22] The General Division was aware that the Claimant had stopped work on September 25, 2021, and returned to work for one day on September 29, 2021. The General Division noted in its decision that, in his application for benefits, the Claimant said his last day worked was September 25, 2021. The General Division also noted in its decision that the Claimant's employer asked him to return to work on September 29, 2021.[12]

[23] The law says that an interruption of earnings occurs when the following criteria are met:[13]

- the claimant is laid off or separated from their employment, and
- the claimant doesn't work for seven consecutive days for that employer, and
- there are at least seven consecutive days in which no earnings arise from that employment.

[24] The General Division referred to this law and decided that the Claimant's interruption of earnings was on September 29, 2021.[14]

[25] The Claimant's interruption of earnings could not be on September 25, 2021. Since the Claimant worked for the same employer on September 29, 2021, he did not have a period of at least seven days from September 25, 2021, where he didn't work for his employer or have no earnings arising from that employment. So, the General Division had to conclude that the Claimant's interruption of earnings was on September 29, 2021.

[12] See paragraph 23 of the General Division's decision.
[13] See section 14(1) of the EI Regulations.
[14] See paragraphs 23 and 24 of the General Division decision.

[26] There is no arguable case, therefore, that the General Division made an error of law when it decided the Claimant's benefit period would have begun on September 26, 2021. Because the Claimant made his initial claim for benefits on September 27, 2021, and had an interruption of earnings on September 29, 2021, the benefit period had to start on September 26, 2021.[15]

[27] Even if the Claimant's interruption of earnings had been on September 25, 2021, that would not have changed the start of the Claimant's benefit period. Given the initial claim for benefits was made on September 27, 2021, the benefit period would still have started on September 26, 2021.

Section 153.17 (1)(b) of the EI Act did not apply to the Claimant

[28] The General Division did not err in law when it decided that section 153.17(1)(b) of the EI Act, did not apply to the Claimant. That provision ceased to apply on September 25, 2021, before the Claimant's benefit period would have begun on September 26, 2021.

[29] The General Division decided section 153.17(1)(b) of the EI Act did not apply to the Claimant because it ceased to apply on September 25, 2021, before the Claimant's benefit period would have begun.

[30] The Claimant makes no specific argument about how this provision applies to him, other than the fact he had been given misleading and incorrect information from the Commission about when the temporary measures ended. I will address the Claimant's argument about the misleading and incorrect information below.

[31] Section 153.17 of the EI Act was enacted as a temporary measure. It provides that a claimant who makes an initial claim for regular 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 300 hours of insurable employment in their qualifying period.

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[15] See section 10(1) of the EI Act.

[32] However, section 153.196(1) of the EI Act says that section 153.17 of the EI Act "ceases to apply" on September 25, 2021.

[33] The General Division decided that the Claimant's benefit period began on September 26, 2021, so section 153.17 of the EI Act did not apply to him and he could not benefit from the credit of hours of insurable employment.[16]

[34] The General Division had to reach this conclusion.

[35] In addition to section 153.196 of the EI Act which says that section 153.17 ceases to apply on September 25, 2021, section 333 of the *Budget Implementation Act, 2021*, No. 1, provides that Part VIII of the EI Act (where section 153.17 of the EI Act is found) continues to apply only to benefit periods beginning between September 27, 2020, and September 25, 2021.[17]

[36] The clear meaning of section 153.196 and section 333 of the *Budget Implementation Act, 2021* No. 1, when read together, is that section 153.17 cannot apply to benefit periods which would have started on or after September 26, 2021.

[37] Since the Claimant's benefit period would have begun on September 26, 2021, the General Division had no choice but to conclude that the Claimant could not benefit from the credit of 300 hours.

[38] There is no arguable case that the General Division erred in law when it decided the Claimant could not have the credit of 300 hours added to his qualifying period.

The Claimant did not have enough hours to qualify for benefits

[39] The General Division did not err in law when it decided the Claimant did not have the 420 hours of insurable employment needed to qualify for benefits.

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[16] See paragraphs 24 and 25 of the General Division decision.
[17] See section 333 of the Budget Implementation Act, 2021, No. 1.

[40] The General Division considered the evidence before it and applied the relevant law when it decided that the Claimant did not have enough hours of insurable employment to establish a benefit period for regular benefits.

[41] To qualify for EI regular benefits, a person must have worked enough hours within a certain time frame.[18] This time frame is called the "qualifying period."

[42] Generally, the qualifying period is the 52-week period immediately before the beginning of a benefit period.[19]

[43] The Commission determined the Claimant's qualifying period to be the 52-week period prior to the start of his benefit period on September 26, 2021. The Claimant did not dispute this determination. The General Division accepted that the Claimant's qualifying period was from September 27, 2020, to September 25, 2021.

[44] The Commission decided the Claimant had worked and earned 200 insurable hours in his qualifying period. Before the General Division, the Claimant did not dispute the Commission's determination of the hours he had earned from working. As above, his only dispute concerned whether he could have the credit of 300 hours. So, the General Division accepted that the Claimant had worked and earned 200 hours of insurable employment in his qualifying period.[20]

[45] The Commission argued before the General Division that the Claimant required 420 hours of insurable employment in his qualifying period to establish a claim for regular benefits.[21] The Claimant did not dispute this. The General Division accepted that the Claimant required 420 hours of insurable employment to qualify for benefits.

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[18] See section 7 of the EI Act.
[19] See section 8(1) of the EI Act. It could be less than 52 weeks if a claimant had an immediately preceding benefit period.
[20] See paragraph 26 of the General Division decision.
[21] GD4-3.

[46] The General Division did not err in finding the Claimant required 420 hours of insurable employment to qualify for benefits. As of September 26, 2021, in order to establish a claim for special or regular benefits, all claimants required 420 hours of insurable employment in their qualifying period.[22]

[47] Having found the Claimant could not benefit from the credit of 300 hours, and since the Claimant had earned less than the required 420 hours, the General Division had to conclude the Claimant did not qualify for benefits.

[48] The Claimant argues in his Application to the Appeal Division that an error of fact arose because there was misleading and incorrect information published on Service Canada website. He says that if the correct information had been published, he would not have worked the extra day and would have been eligible for benefits. He also says that Service Canada staff told him, based on his situation that he would have been eligible.

[49] The Claimant's concerns are with the factual accuracy of information provided to him by the Commission. He does not identify any factual error made by the General Division. This appeal is concerned with potential errors made by the General Division, not the Commission.

[50] The General Division did not overlook or misconstrue the Claimant's evidence that he had relied on misleading or incorrect information provided by the Commission.

[51] The General Division acknowledged the documentary evidence the Claimant had provided from the Government of Canada's website that stated that the changes, one of which was the one-time credit of 300 insurable hours, were in effect until September 2021. The General Division also acknowledged the screenshot of a page from the Government of Canada website, which says that the temporary changes to help claimants get EI benefits as of September 27, 2020, would be in effect for one year.[23]

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[22] Version of section 7(2) of the EI Act in effect from September 26, 2021-09-26 to May 2, 2022.
[23] See paragraphs 17 and 18 of the General Division decision.

[52] The General Division considered the Claimant's argument that, based on the documentation on the website, one could reasonably conclude that the measures were in effect a year from September 27, 2020, or even until the end of September 2021. The General Division also considered the Claimant's argument that since the Commission required him to comply with what is on their website, they should do the same.

[53] The General Division found it unfortunate the information on the Commission's website was not more precise but decided it could not rewrite the law or interpret it in a way that is contrary to its plain meaning to find the Claimant eligible for benefits where he did not meet the qualifying requirements.

[54] Despite the misleading or unclear information on the Commission's website, the General Division could not have granted the Claimant's request to find him eligible for benefits, where he did not meet the qualifying requirements.[24]

[55] The Federal Court of Appeal has said that misinformation by the Commission is no basis for relief from the operation of the EI Act. It has also said the law has to be followed even if the Commission made a mistake.[25]

[56] While I am sympathetic to the Claimant's situation, neither the General Division nor the Appeal Division has the authority to step outside the qualifying requirements in the law, even if the Commission has provided unclear or misleading information about the temporary measures or about his eligibility.

[57] Beyond the arguments raised by the Claimant, I have reviewed the entire written record and listened to the recording of the hearing.[26] I am satisfied that the General Division did not misunderstand or ignore evidence that could have an impact on the outcome of this appeal. The Claimant has not argued that the General Division proceeding was unfair and I see no evidence to suggest that was the case.

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[24] See *Canada (Attorney General)* v Shaw, 2002 FCA 325 and *Robinson v Canada (Attorney General)*, 2013 FCA 255.
[25] See Canada (Attorney General) v Levesque, 2001 FCA 304; and Pannu v Canada (Attorney General), 2004 FCA 90.
[26] See *Karadeolian v Canada (Attorney General)*, 2016 FC 615, which recommends doing such a review.

Conclusion

[58] Permission to appeal is refused. This means that the appeal will not proceed.

Charlotte McQuade
Member, Appeal Division