



[TRANSLATION]

Citation: *JV v Canada Employment Insurance Commission*, 2022 SST 792

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: J. V.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated
June 24, 2022 (GE-22-910)

Tribunal member: Pierre Lafontaine

Decision date: August 23, 2022

File number: AD-22-479

Decision

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

Overview

[2] On September 25, 2021, the Applicant (Claimant) applied for benefits. The Respondent (Commission) determined that he had 363 hours of insurable employment in his qualifying period from March 8, 2020, to September 18, 2021, when he needed 420 hours of insurable employment to qualify. This meant that he did not qualify for benefits. The Claimant appealed the reconsideration decision to the General Division.

[3] The General Division determined that the Claimant had 363 hours of insurable employment in his qualifying period, when he needed 420 hours of insurable employment to qualify for regular benefits, or 600 hours for sickness benefits. It found that the Claimant had not shown that he had enough insurable hours to receive benefits.

[4] The Claimant seeks leave from the Appeal Division to appeal the General Division decision. He argues that he would have qualified if he had done what he did during the period from September to December 2020. He says that he went through several hardships and that he had anxiety at the time. He would have liked to have been better informed to get the help he needs.

[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 his case; he must instead establish that the appeal has a reasonable chance of success. In other words, he 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 he disagrees with the General Division's decision. He says that he would have qualified during the period from September to December 2020. He says that he went through several hardships and that he had anxiety at the time. He would have liked to have been better informed to get the help he needs.

[12] The evidence shows that the Claimant had only 363 hours of insurable employment in his qualifying period (extended by temporary pandemic measures) from

March 8, 2020, to September 18, 2021, when he needed 420 hours for regular benefits or 600 hours for sickness benefits.¹

[13] As the General Division decided, the 203 insurable hours he worked during the period of employment from August 12, 2019, to October 21, 2019, fall outside his extended qualifying period from March 8, 2020, to September 18, 2021, and cannot be included in calculating the total number of insurable hours in his qualifying period.

[14] Although I sympathize with the Claimant's situation, the law unfortunately does not allow any discrepancy and gives the Tribunal **no discretion**—not even for humanitarian reasons—to fix the defect in his September 25, 2021, claim for benefits.²

[15] 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

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

[17] As the General Division said, it is up to the Claimant to discuss with the Commission whether his September 25, 2021, claim for benefits can be antedated.

Pierre Lafontaine
Member, Appeal Division

¹ The Claimant has a credit of 300 insurable hours, plus the 63 insurable hours he worked during his qualifying period.

² *Canada (Attorney General) v Lévesque*, 2001 FCA 304.