Citation: *JG v Canada Employment Insurance Commission*, 2022 SST 644

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

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

Decision under appeal:	General Division decision dated March 29, 2022 (GE-22-602)

Tribunal member:	Melanie Petrunia
Decision date:	July 15, 2022
File number:	AD-22-286

Decision

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

Overview

[2] The Claimant applied for employment insurance (EI) sickness benefits. To qualify, she needed to have worked 420 or more hours in her qualifying period. The Commission decided that she did not qualify because she had only worked 329 hours.

[3] The Claimant requested a reconsideration and the Commission maintained its decision. The Claimant appealed to the Tribunal's General Division. The General Division dismissed the appeal. It found that the Claimant did not have enough hours to qualify for EI sickness benefits.

[4] The Claimant now wants to appeal the General Division decision to the Tribunal's Appeal Division. She argues that the General Division made important errors of fact.

[5] I have to decide whether there is some reviewable error of the General Division on which the appeal might succeed. I am refusing leave to appeal because the Claimant's appeal has no reasonable chance of success.

Issue

[6] Is there an arguable case that the General Division made important errors of fact?

Analysis

[7] The *Department of Employment and Social Development Act* (DESD Act) sets out the only grounds of appeal of a General Division decision.[1] An appeal is not a rehearing of the original claim. Instead, I must decide whether the General Division:

[1] DESD Act, s 58(2).

a) failed to provide a fair process;

b) failed to decide an issue that it should have, or decided an issue that it should not have;

c) based its decision on an important factual error;[2] or

d) made an error in law.[3]

[8] Before the Claimant can move on to the next stage of the appeal, I have to be satisfied that there is a reasonable chance of success based on one or more of these grounds of appeal. A reasonable chance of success means that the Claimant could argue her case and possibly win.

[9] I will grant leave if I am satisfied that at least one of the Claimant's stated grounds of appeal gives the appeal a reasonable chance of success. It is a lower threshold than the one that must be met when the appeal is heard on the merits later on in the process if leave to appeal is granted.

[10] Before I can grant leave to appeal, I need to be satisfied that the Claimant's arguments fall within any of the grounds of appeal stated above and that at least one of these arguments has a reasonable chance of success. I should also be aware of other possible grounds of appeal not precisely identified by the Claimant.[4]

Is there an arguable case that the General Division made important errors of fact?

[11] In her application for leave to appeal, the Claimant states that the General Division made four important errors of fact. First, she states that the General Division

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[2] The language of section 58(1)(c) actually says that the General Division will have erred if it bases its decision on a finding of fact that it makes in a perverse or capricious manner or without regard for the material before it. The Federal Court has defined perverse as "willfully going contrary to the evidence" and defined capricious as "marked or guided by caprice; given to changes of interest or attitude according to whim or fancies; not guided by steady judgment or intent" *Rahi v Canada (Minister of Citizenship and Immigration)* 2012 FC 319.

[3] This paraphrases the grounds of appeal.

[4] *Karadeolian v Canada (Attorney General)*, 2016 FC 615; J*oseph v Canada (Attorney General)*, 2017 FC 391.

should have considered whether she demonstrated reasonable reasons for not accumulating enough hours of insurable employment. Instead, the Claimant argues that the General Division only considered whether she had worked enough hours.

[12] I find that this argument does not have a reasonable chance of success. The General Division properly considered whether the Claimant had accumulated enough hours to qualify for benefits.

[13] In order to qualify for benefits, a claimant has to have worked enough hours in their qualifying period. There are certain circumstances that allow a qualifying period to be extended. However, the EI Act does not allow for consideration of whether or not a claimant had a reasonable explanation for not accumulating sufficient hours.[5] The General Division did not make an error by not considering whether the Claimant's reasons for not having enough hours in her qualifying period were reasonable.

[14] Secondly, the Claimant also argues that the General Division did not consider that her doctor told her to stop working because of her pregnancy. She claims that the General Division did not assess her claim in light of another tribunal decision, which may be similar to the Claimant's situation.[6]

[15] The Claimant made the argument before the General Division that the other decision might apply to her case. The General Division considered the decision. It found that the Claimant's situation was not similar to the claimants in the other case.[7] In the other case, the claimants were not able to accumulate enough hours to receive regular benefits because they had previously received maternity and parental benefits.

[16] The General Division considered the Claimant's argument that this case applied to her circumstances. It found that, unlike in the other case, the Claimant was unable to

[5] See General Division decision at para 27.
[6] *LE, EB, KG, VD, MT and CL v. Canada Employment Insurance Commission*, 2022 SST 8.
[7] See General Division decision at para 31.

work because she was ill and that this was the reason she did not have enough hours to qualify for sickness benefits.[8]

[17] I find that the General Division did not make an error of fact or law by finding that the case referred to did not apply to the Claimant's circumstances. The General Division is not bound by other General Division decisions. It considered the decision and gave reasons why it determined that it did not apply to the Claimant.

[18] Thirdly, the Claimant argues that the General Division erred by failing to consider that the EI Act is treating her differently because she is a woman. She says that the illness that caused her to go off work was related to her pregnancy and therefore she is being treated differently because she is a woman.

[19] I have listened to the hearing before the General Division and reviewed the Notice of Appeal. The Claimant did not raise the argument before the General Division that she was being discriminated against on the basis of her gender. The General Division stated in its decision that the Claimant "didn't say that the EI Act is treating her differently because of who she is."[9]

[20] There is no arguable case that the General Division erred by failing to consider an argument that was not made by the Claimant.

[21] Finally, the Claimant argues that the General Division failed to consider that she was given incorrect information about her eligibility for a one-time credit of additional hours. The Claimant discussed this at the hearing before the General Division. The General Division does not directly address this in its decision; however, I do not find that there is arguable case that the General Division made an important error of fact on this basis.

[22] At the hearing before the General Division, and in her Notice of Appeal, the Claimant stated that she spoke with an agent who told her she could receive the one-time credit. She later spoke with another agent who told her she could not use the one-

[8] See General Division decision at para 31.
[9] See General Division decision at para 32.

time credit because it was applied toward an earlier claim. The second discussion was before the Claimant stopped working and applied for benefits.[10]

[23] The Claimant discussed this in support of her argument that she should be able to use the additional hours because she did not need them on the earlier claim. This argument was thoroughly considered by the General Division.[11]

[24] It is well established that receiving incorrect information from the Commission does not change the law, or mean that the law does not apply. The General Division could not interpret the EI Act contrary to its plain meaning on the basis of misinformation from a Service Canada Agent.[12]

[25] At the hearing before the General Division, the Claimant argued that she should be able to use hours from a previous qualifying period, or the additional one-time hours credit to make up her shortfall of 91 hours. She argued that she would have accumulated enough hours if it had not been for a number of circumstances, including: needing to homeschool during the pandemic; misinformation from the Commission; high blood pressure from her pregnancy; a car accident; and, contracting Covid.[13]

[26] The General Division properly considered the relevant facts and applied the law. It determined that the Claimant did not have enough insurable hours to qualify for benefits and that she could not apply any hours from the additional one-time credit to her qualifying period.[14]

[27] There is no arguable case that the General Division made any of the errors of fact or law that the Claimant has identified in her application for leave to appeal.

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[10] See GD2-6. In her Notice of Appeal the Claimant stated that the second conversation was in August 2021.
[11] See General Division decision at paras 23 to 27.
[12] *Canada (Attorney General) v. Knee*, 2011 FCA 301 at para 9.
[13] Recording of the hearing before the General Division at approx. 43:00.
[14] See General Division decision at para 27.

There is no arguable case that the General Division made any other reviewable errors

[28] Aside from the Claimant's arguments, I have also considered other grounds of appeal.

[29] The Claimant has not pointed to any procedural unfairness on the part of the General Division and I see no evidence of procedural unfairness. There is no arguable case that the General Division made an error of jurisdiction. I have not identified any errors of law.

[30] The Claimant's circumstances are sympathetic. However, she has not identified any errors of the General Division upon which the appeal might succeed. As a result, I am refusing leave to appeal.

Conclusion

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

Melanie Petrunia
Member, Appeal Division