



Citation: *KM v Canada Employment Insurance Commission*, 2022 SST 610

**Social Security Tribunal of Canada  
General Division – Employment Insurance Section**

## **Decision**

**Appellant:** K. M.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (456503) dated March 4, 2022  
(issued by Service Canada)

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**Tribunal member:** Lilian Klein

**Decision date:** June 30, 2022

**File number:** GE-22-1306

## Decision

[1] I must summarily dismiss the Claimant's appeal since it has no reasonable chance of success.

## Overview

[2] A summary dismissal is not the usual way to decide cases, but the law says I *must* summarily dismiss an appeal if it has no reasonable chance of success.<sup>1</sup>

[3] The Appellant (I refer to her as the Claimant) applied for Employment Insurance (EI) regular benefits. The Respondent (the Commission) refused her application since she did not have enough hours of insurable employment in her qualifying period. The Claimant is now appealing the Commission's decision to the Tribunal.

## The issue I must decide

[4] Does the Claimant's appeal have a reasonable chance of success?

## Matters I must consider first

[5] The law says before summarily dismissing an appeal, I must give notice in writing to the Claimant and allow her a reasonable period to respond.<sup>2</sup> On June 9, 2022, I gave her notice of my intention to summarily dismiss her appeal. I set June 23, 2022, as the deadline for her reply. She replied on June 16, 2022. She included submissions about her CPP benefits, but that issue is not before me. The Commission made no further comment.

## Analysis

[6] A summary dismissal is not the usual way for me to decide cases but the law says I *must* summarily dismiss an appeal if it has no reasonable chance of success.<sup>3</sup>

[7] The Tribunal's Appeal Division<sup>4</sup> says I must ask the following question to decide whether the Claimant's appeal has a reasonable chance of success: Is it plain and obvious

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<sup>1</sup> S 53(1) of the *Department of Employment and Social Development Act* (DESD Act).

<sup>2</sup> S 22 of the *Social Security Tribunal Regulations*.

<sup>3</sup> S 53(1) of the DESD Act.

<sup>4</sup> I do not have to follow the Appeal Division's decisions but can choose to do so where I agree with its logic.

that her appeal is bound to fail? <sup>5</sup> Put another way, is there any possible argument or evidence that the Claimant could present at a hearing that would change the outcome of her appeal? Does she have an arguable case? <sup>6</sup>

[8] The Claimant applied for regular benefits on January 7, 2022. At that time, she needed 420 hours of insurable employment in her qualifying period, from January 3, 2021, to January 1, 2022. But she only had 151 hours.

[9] The Claimant says it is unreasonable for the government to ask for 420 insurable hours when it closed schools in 2020 and 2021, causing her to lose her job. She wants to backdate her claim to September 9, 2021. She wants to get the additional 300 “deemed” hours temporarily allowed for claims from September 27, 2020, to September 25, 2021.<sup>7</sup> She says she should be able to apply unused insurable hours from previous years.

[10] It is plain and obvious that the Claimant’s appeal is bound to fail. I make this finding because she has no arguable case. She needed 420 insurable hours in her qualifying period to qualify for benefits. The law says this is a strict requirement. She cannot use insurable hours from before her qualifying period to help her qualify for benefits.<sup>8</sup>

[11] I sympathize with the Claimant’s difficult situation, but I cannot change the law that sets out the number of insurable hours she needed in her qualifying period.<sup>9</sup>

## Conclusion

[12] I must summarily dismiss the Claimant’s appeal because it has no reasonable chance of success.

Lilian Klein

Member, General Division – Employment Insurance Section

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<sup>5</sup> See *M.C. v Canada Employment Commission*, 2015 SSTAD 237, citing *Lessard-Gauvin v Canada (Attorney General)*, 2013 FCA 147.

<sup>6</sup> *Breslaw v. Canada (Attorney General)*, 2004 FCA 264.

<sup>7</sup> See s 153.17(1) of the EI Act.

<sup>8</sup> *Canada (Attorney General) v Knee*, 2011 FCA 301.

<sup>9</sup> *Haile v Attorney of Canada*, 2008 FCA 193.