



[TRANSLATION]

Citation: *JB v Canada Employment Insurance Commission*, 2022 SST 818

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: J. B.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated
May 26, 2022 (GE-22-687)

Tribunal member: Pierre Lafontaine

Decision date: August 26, 2022

File number: AD-22-380

Decision

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

Overview

[2] The Applicant (Claimant) filed an initial claim for Employment Insurance (EI) benefits on November 17, 2021. The Respondent (Commission) determined that she had 398 hours of insurable employment in her qualifying period from November 8, 2020, to November 6, 2021, when she needed 420 hours of insurable employment to qualify. This meant that she did not qualify for regular benefits. She appealed the reconsideration decision to the General Division.

[3] The General Division determined that the Claimant had 398 hours of insurable employment in her qualifying period, when she needed 420 hours of insurable employment to qualify for regular benefits. It found that the Claimant had not shown that she had enough insurable hours to receive benefits.

[4] The Claimant seeks leave from the Appeal Division to appeal the General Division decision. She disagrees with the number of insurable hours reported by one of her employers. She says that she is short about 40 hours and that, with these hours, she would be entitled to EI benefits.

[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 her case; she must instead establish that the appeal has a reasonable chance of success. In other words, she 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.

Preliminary remarks

[11] I asked the Claimant to submit evidence of her appeal of the Canada Revenue Agency (CRA) ruling dated April 21, 2022.

[12] The Claimant failed to do as I asked, despite several reminders. As a result, I will decide leave to appeal based on the evidence that was before the General Division.

Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

[13] The Claimant disagrees with the number of insurable hours reported by one of her employers. She says that she is short about 40 hours and that, with these hours, she would be entitled to EI benefits.

[14] The evidence shows that the Claimant had only 398 hours of insurable employment in her qualifying period from November 8, 2020, to November 6, 2021, when she needed 420 hours to receive regular benefits.¹

[15] The Claimant still disputes the number of hours of insurable employment reported by the employer X.

[16] The CRA made a ruling on the number of hours that the Claimant worked during her qualifying period for the employer X. It said that the Claimant worked 235 hours.²

[17] It is well established in case law that the CRA has exclusive jurisdiction to make a determination on how many hours of insurable employment a claimant possesses for the purposes of the *Employment Insurance Act*.³

[18] If the Claimant was dissatisfied with the CRA's April 21, 2022, ruling concerning the employer X, she needed to follow the appeal process mentioned in the ruling, not the appeal process at the Tribunal, which has no jurisdiction in such matters.⁴

[19] Since the Claimant failed to do this, I am bound by the CRA's ruling that the Claimant had 235 hours of insurable employment with the employer X. This means that the Claimant does not have the required number of hours to qualify for regular benefits.

¹ X – 78 hours; X – 85 hours; X – 235 hours) [*sic*].

² See GD8-2.

³ *Canada (Attorney General) v Romano*, 2008 FCA 117; *Canada (Attorney General) v Didiodato*, 2002 FCA 345; *Canada (Attorney General) v Haberman*, A-717-98.

⁴ See GD8-3.

[20] Although I sympathize with the Claimant's situation, the law unfortunately does not allow any discrepancy and gives me **no discretion** to fix the defect in her November 17, 2021, claim for benefits.⁵

[21] 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

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

Pierre Lafontaine
Member, Appeal Division

⁵ *Canada (Attorney General) v Lévesque*, 2001 FCA 304.