



Citation: *NH v Canada Employment Insurance Commission*, 2022 SST 885

## **Social Security Tribunal of Canada Appeal Division**

# **Decision**

**Appellant:** N. H.

**Respondent:** Canada Employment Insurance Commission  
**Representative:** Josée Lachance

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**Decision under appeal:** General Division decision dated May 26, 2022  
(GE-22-1061)

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**Tribunal member:** Shirley Netten

**Type of hearing:** On the Record

**Decision date:** September 6, 2022

**File number:** AD-22-360

## **Decision**

[1] The appeal is allowed. The matter will go back to the General Division for reconsideration with directions.

## **Background**

[2] The Claimant, N. H., applied for Employment Insurance (EI) benefits in February 2022. Based on records of employment from two employers, Service Canada (on behalf of the Canada Employment Insurance Commission) decided that the Claimant didn't have enough insurable hours to get benefits.

[3] The Claimant appealed to the Tribunal's General Division, pointing out that he also had insurable hours from a third employer. The General Division summarily dismissed his appeal, without a hearing.

## **The parties agree on the outcome of the appeal**

[4] The Claimant and the Canada Employment Insurance Commission (Commission) agree that the General Division did not apply the correct legal test for summarily dismissing the appeal. They agree to return the matter to the General Division, subject to the directions outlined below.

## **I accept the proposed outcome**

[5] I agree with the parties that the General Division did not apply the correct legal test, because it did not consider whether the appeal was bound to fail regardless of the evidence that could be submitted. Rather, the General Division decided, based on the evidence it had up to that point and without a hearing, that the appeal would not succeed.

[6] In his appeal, the Claimant disputed the insurable hours accepted by the Commission. The Claimant might have been able to provide additional evidence about his employment with the third employer and, if the hours remained in dispute, a ruling

from the Canada Revenue Agency (CRA). It was not up to the General Division to decide that the Claimant didn't have enough insurable hours based on his pay stubs.<sup>1</sup>

[7] Because I can't accept new evidence about the Claimant's insurable hours, the matter must return to the General Division. However, the General Division is directed to delay proceeding with a hearing until:

- There is a ruling from the CRA about the Claimant's insurable hours with X;
- The Commission updates its correspondence of August 4, 2022,<sup>2</sup> outlining the Claimant's options, based on the CRA ruling; and
- The Claimant confirms whether he wishes to continue his appeal about his February 2022 claim at the General Division or instead continue with his June 2022 claim.

[8] That said, the General Division could convene a case conference now and/or at a later stage, as appropriate. I understand that the Claimant has had some difficulty requesting the CRA ruling. The law requires a CRA ruling if a question of insurable hours arises in the consideration of a claim for benefits, and so I encourage the Commission to make this request.<sup>3</sup> There is some advantage to the Commission, rather than the Claimant, requesting this ruling: there is no time limit, and the Commission can specify the two qualifying periods that are relevant to the Claimant's claims. Only the General Division has the power to direct the Commission in this respect.<sup>4</sup>

[9] This direction does not prevent the General Division from proceeding with its hearing if the parties agree on the insurable hours (making the CRA ruling unnecessary) or if the parties do not take the second and third steps in a reasonable time. Although the Claimant has options for his benefits, only the February 2022 claim is under appeal at the General Division.

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<sup>1</sup> Section 90 of the *Employment Insurance Act*

<sup>2</sup> This is coded as AD19

<sup>3</sup> Section 90.1 of the *Employment Insurance Act*

<sup>4</sup> Section 32, *Social Security Tribunal Regulations*

[10] The parties have agreed that their correspondence to the Appeal Division will be in the record that returns to the General Division

## **Conclusion**

[11] The appeal is allowed. The matter returns to the General Division for reconsideration by a different member, with the directions outlined above.

Shirley Netten  
Member, Appeal Division