



Citation: *RL v Canada Employment Insurance Commission*, 2022 SST 929

**Social Security Tribunal of Canada
Appeal Division**

Leave to Appeal Decision

Applicant: R. L.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated June 3, 2022
(GE-22-721)

Tribunal member: Pierre Lafontaine

Decision date: September 22, 2022

File number: AD-22-405

Decision

[1] Leave to appeal is refused. This means the appeal will not proceed.

Overview

[2] The Applicant (Claimant) applied for Employment Insurance benefits. The Respondent, the Canada Employment Insurance Commission (Commission), determined that the Claimant had not worked enough hours to qualify. It found that the Claimant had 388 hours but needed 420 hours. Upon reconsideration, the Commission maintained its initial decision. The Claimant appealed the Commission decision to the General Division of the Tribunal.

[3] The General Division found that since the Claimant was required to have 420 hours of insurable employment in order to qualify for regular employment insurance benefits and that he only had 388 hours, the Claimant did not qualify for benefits.

[4] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. He submits that he believed the General Division had a level of discretion in the process. The Claimant puts forward that he needs more time to provide new hours to qualify.

[5] I must decide whether there is some reviewable error of the General Division upon which the appeal might succeed.

[6] I have no choice but to refuse leave to appeal because the Claimant's appeal has no reasonable chance of success.

Issue

[7] Does the Claimant raise some reviewable error of the General Division upon which the appeal might arguably succeed?

Analysis

[8] Section 58(1) of the *Department of Employment and Social Development Act* (DESD Act) specifies the only grounds of appeal of a General Division decision. These reviewable errors are that:

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 on the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove his case but must establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, that there is arguably some reviewable error upon which the appeal might succeed.

[10] Therefore, before leave can be granted, I need to be satisfied that the reasons for appeal fall within any of the above-mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success.

Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

[11] The Claimant submits that he believed the General Division had a level of discretion in the process. He puts forward that he needs more time to provide new hours to qualify.

[12] The Appeal Division has established that, with a few exceptions that do not apply to the facts of this case, new evidence is not admissible before the Appeal Division because of its limited powers.¹

[13] An application to rescind or amend a General Division decision under section 66 of the DESD Act is the appropriate process for trying to introduce new evidence. I will therefore decide on this application for leave to appeal based on the evidence before the General Division.²

[14] The General Division found that since the Claimant was required to have 420 hours of insurable employment in order to qualify for regular employment insurance benefits and that he only had 388 hours, the Claimant did not qualify for benefits.

[15] I see no reviewable error made by the General Division when it concluded that the Claimant did not meet the requirements to qualify for benefits.

[16] As stated by the General Division, the requirement of the *Employment Insurance Act* does not allow any discrepancy and provides no discretion to the Tribunal. Neither the General Division nor the Appeal Division can circumvent, rewrite or ignore the law.

[17] After reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Claimant in support of his application for leave to appeal, I find that the appeal has no reasonable chance of success. The Claimant has not set out a reason, which falls into the above-enumerated grounds of appeal that could possibly lead to the reversal of the disputed decision.

¹ *Marcia v Canada (Attorney General)*, 2016 FC 1367; *Paradis v Canada (Attorney General)*, 2016 FC 1282.

² On April 9, 2022, the Appeal Division informed the Claimant of this option to file new evidence.

Conclusion

[18] Leave to appeal is refused. This means the appeal will not proceed

Pierre Lafontaine
Member, Appeal Division