



Citation: *GM v Canada Employment Insurance Commission*, 2022 SST 911

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: G. M.

Respondent: Canada Employment Insurance Commission
Representative: Angele Fricker

Decision under appeal: General Division decision dated May 27, 2022
(GE-22-1371)

Tribunal member: Pierre Lafontaine

Type of hearing: Teleconference
Hearing date: September 15, 2022

Hearing participants: Appellant
Respondent's representative

Decision date: September 20, 2022
File number: AD-22-371

Decision

[1] The appeal is dismissed.

Overview

[2] The Appellant (Claimant) applied for regular benefits. The Respondent, the Canada Employment Insurance Commission (Commission), notified the Claimant that it was unable to pay him employment insurance benefits because he had 359 hours of insurable employment, but needed 420 hours to qualify for benefits. The Claimant requested a reconsideration of the Commission's decision. The Commission maintained its initial decision. The Claimant appealed to the General Division.

[3] The General Division found that it was plain and obvious that the Claimant's appeal was bound to fail. He did not have enough hours to qualify for benefits. It summarily dismissed the Claimant's appeal.

[4] I must decide whether the General Division erred when it summarily dismissed the Claimant's appeal.

[5] I dismiss the Claimant's appeal.

Issue

[6] Did the General Division make an error when it summarily dismissed the Claimant's appeal?

Analysis

Did the General Division make an error when it summarily dismissed the Claimant's appeal?

[7] The General Division must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success.¹

[8] The Appeal Division has established that the correct test to be applied in cases of summary dismissal is the following:

- Is it plain and obvious on the face of the record that the appeal is bound to fail?²

[9] To be clear, the question is whether the failure is pre-ordained no matter what evidence or arguments might be presented at the hearing.

[10] The Claimant applied for regular benefits on February 9, 2022 and the Commission correctly determined his qualifying period to be from January 30, 2021, to January 29, 2022.

[11] The evidence shows that the Claimant had 359 insurable hours of work in his qualifying period, but he needed 420 hours to qualify for benefits.

[12] The Claimant puts forward that he should benefit from an extension of the qualifying period because he underwent hip surgery in February 2021. He could only work from home during the recovery weeks. The Claimant puts forward that he qualifies for benefits if an extension of the qualifying period is granted.

[13] The law clearly states that a qualifying period can be extended by the aggregate of any weeks during the qualifying period for which the person proves that **throughout the week** (during the whole week) the person was not employed in insurable employment because the person was incapable of work because of a prescribed illness, injury, quarantine or pregnancy.³

¹ Section 53(1) of the DESD Act.

² *J. S. v Canada Employment Insurance Commission*, 2015 SSTAD 1132; *C. D. v Canada Employment Insurance Commission*, 2015 SSTAD 594.

³ See section 8(2) (a) of the *Employment Insurance Act*.

[14] The General Division found that although the Claimant was prevented from doing the physical aspects of his job, he had acknowledged that he was able to continue working from home on the computer.⁴

[15] Based on this evidence, the General Division had no choice but to conclude that the Claimant did not meet the requirements for an extension since he did not demonstrate that, throughout the week, he was not employed because of his illness or injury.

[16] I find that the General Division applied the correct test. I agree that it was plain and obvious on the face of the record that the appeal to the General Division was bound to fail. As such, the General Division member's determination that this appeal should be summarily dismissed was correct.

[17] The Claimant argues that he would have definitely worked more hours if not for his hip surgery. Unfortunately, for the Claimant, the law does not allow any discrepancy and gives the Tribunal no discretion—not even for humanitarian reasons—to fix the defect in his February 9, 2022, claim for benefits.

Conclusion

[18] The appeal is dismissed.

Pierre Lafontaine
Member, Appeal Division

⁴ See GD2-8.