Citation: *AT v Canada Employment Insurance Commission*, 2022 SST 907

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	A. T.
Representative:	A. T.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated September 1, 2022 (GE-22-2223)

Tribunal member:	Charlotte McQuade
Decision date:	September 16, 2022
File number:	AD-22-650

Decision

[1] I am refusing permission (leave) to appeal. The appeal will not proceed.

Overview

[2] A. T. is the Claimant. The Canada Employment Insurance Commission (Commission) decided the Claimant was entitled to 50 weeks of Employment Insurance (EI) regular benefits.

[3] The Claimant appealed the Commission's decision to the General Division but his appeal was dismissed. The Claimant appealed that decision to the Tribunal's Appeal Division. The Appeal Division returned the matter to the General Division for reconsideration as the first hearing had not been procedurally fair.

[4] After a new hearing, the General Division decided the Claimant was entitled to a maximum of 50 weeks of regular benefits. The Claimant is now asking to appeal that decision to the Tribunal's Appeal Division. However, he needs permission for his appeal to move forward. The Claimant argues that the General Division made an important error of fact or law by using the regional rate of unemployment from the EI economic region where he lived, rather than where he worked, to decide how many weeks of benefits he was entitled to.

[5] I am satisfied that the appeal has no reasonable chance of success. So, I am refusing leave to appeal. This means the Claimant's appeal cannot proceed.

Issue

[6] Did the General Division make an important error of fact or law when it used the regional rate of unemployment from where the Claimant lived, rather than the regional rate of unemployment where he worked, to decide how many weeks of benefits the Claimant was entitled to?

Analysis

[7] The Appeal Division has a two-step process. First, the Claimant needs permission to appeal. If permission is denied, the appeal stops there. If permission is given, the appeal moves on to step two. The second step is where the merits of the appeal are decided.

[8] I must refuse permission to appeal if I am satisfied that the appeal has no reasonable chance of success.[1]

[9] The law says that I can only consider certain types of errors.[2] There errors are:

- The General Division hearing process was not fair in some way
- The General Division made an error of jurisdiction (meaning that it did not decide an issue that it should have decided or it decided something it did not have the power to decide).
- The General Division based its decision on an important error of fact
- The General Division made an error of law

[10] A reasonable chance of success means there is an arguable case that the General Division may have made at least one of those errors.[3]

It is not arguable that the General Division made an error of fact or law when it decided the Claimant was only entitled to 50 weeks of EI regular benefits

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[1] Section 58(2) of the *Department of Employment and Social Development Act* (DESD Act) says this is the test I have to apply.
[2] Section 58(1) of the DESD Act describes the only errors that I can consider when deciding whether to give permission to proceed with an appeal.
[3] See *Osaj v Canada (Attorney General),* 2016 FC 115, which describes what a "reasonable chance of success" means.

[12] The Claimant had received EI Emergency Response Benefits (ERB) benefits until October 3, 2020. The Commission started the Claimant's benefit period for EI regular benefits on October 4, 2020, after his EI ERB claim ended.

[13] The Commission had determined the Claimant was ordinarily resident in the EI economic region of Calgary, based on the address listed on the Claimant's application for EI benefits.[4]

[14] The Commission decided the regional rate of unemployment in the EI economic region of Calgary in the week the Claimant's benefit period began, the week of October 4, 2020, was 14.6%. [5]The Commission also decided that the Claimant had 624 hours of insurable employment in his qualifying period from March 24, 2019, to October 3, 2020.[6]

[15] As a temporary measure, enacted in response to the pandemic, section 12(2.1) was added to the *Employment Insurance Act* (EI Act). This provision applied to claimants whose benefit period began during the period beginning on September 27, 2020, and ending on September 25, 2021. This provision said that the maximum weeks of EI regular benefits, for claimants to whom the provision applied, was 50 weeks.[7]

[16] The Commission applied that temporary measure to decide the Claimant was entitled to a maximum of 50 weeks of regular benefits. The Commission pointed out that, if the temporary measure had not been applied to the Claimant, he would only have been entitled to 30 weeks of regular benefits, given his 624 hours of insurable employment, and the regional rate of unemployment of 14.6%.[8]

[17] The Claimant appealed the Commission's decision to the General Division. As outlined above, the first hearing was determined by the Appeal Division to be procedurally unfair so the appeal was returned to the General Division for reconsideration. The General Division held a new hearing.

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[4] GD3-22.
[5] GD3-23.
[6] GD3-27.
[7] See section 12(2.1) of the *Employment Insurance Act* (EI Act).
[8] GD4-3.

[18] At issue before the General Division was whether the Claimant was entitled to more than 50 weeks of EI regular benefits.

[19] The General Division decided that the temporary measure (section 12(2.1) of the EI Act) applied to the Claimant as his benefit period started on October 4, 2020. This meant he was entitled to a maximum of 50 weeks of EI regular benefits.

[20] The Claimant's representative appeared at the General Division hearing. The Claimant did not attend. The Claimant's representative confirmed to the General Division member that the Claimant had no evidence to present and the record was complete. The Claimant's representative confirmed he was only going to present argument.[9] So, none of the evidence presented by the Commission in the documentary record was disputed.[10]

[21] However, the Claimant's representative questioned whether the Commission had used the correct regional rate of unemployment to determine the maximum weeks of benefits the Claimant was entitled to. He suggested the rate used should be the regional rate of unemployment from the EI economic region where the Claimant worked, instead of where he resided.

[22] The General Division decided that the relevant regional rate of unemployment was that from the EI Economic region of Calgary where the Claimant ordinarily resided, and not the EI Economic region where the Claimant worked. The regional rate of unemployment for the EI economic region of Calgary was 14.6% for the week of October 4, 2020, when the Claimant's benefit period started.[11]

[23] However, the General Division concluded that since the Claimant's benefit period began the week of October 4, 2020, the usual calculation for maximum weeks of

[9] I heard this from the audio tape of the General Division hearing at approximately 0:8:02 to 0:9:40.
[10] The Commission's documentary evidence is found in GD3. See paragraph 10 of the General Division decision.
[11] See paragraphs 20 to 26 of the General Division decision.

benefits did not apply, and the temporary measure was to be applied. This meant the Claimant was entitled to a maximum of 50 weeks of regular benefits.[12]

[24] The Claimant now argues that the General Division made either an error of fact or an error of law when the General Division used the regional rate of unemployment from the EI economic region of Calgary, where he lived, instead of the regional rate of unemployment from the Tsuu T'ina Nation, where he worked to calculate how many weeks of benefits he was entitled to.

[25] It is not arguable the General Division made an error of fact or an error of law when it concluded the Claimant was entitled to 50 weeks of EI regular benefits.

[26] If the Claimant's benefit period had begun, other than during the period from September 27, 2020, to September 25, 2021, the temporary measure wouldn't have applied and the regional rate of unemployment would have been relevant to the calculation of maximum weeks of regular benefits.

[27] In that case, the maximum number of weeks of EI regular benefits would be calculated based on the number of hours of insurable employment the Claimant had accumulated in his qualifying period and the applicable regional rate of unemployment.[13]

[28] The law says that the regional rate of unemployment to be used in that calculation is the rate produced for the region in which the claimant was, during the week the benefit period begins, ordinarily resident.[14]

[29] So, even if the Claimant's benefit period had started outside the period from September 27, 2020, to September 25, 2021, the regional rate of unemployment that would have been used would have been the rate for the EI economic region where the

[12] See paragraphs 40 to 41 of the General Division decision.
[13] See section 12(2) of the EI Act.
[14] See section 17(1.1) of the *Employment Insurance Regulations* (EI Regulations).

Claimant ordinarily resided when his benefit period started, not the EI economic region where the Claimant worked.

[30] However, in the Claimant's case, the regional rate of unemployment was irrelevant to the calculation of the maximum weeks of regular benefits he was entitled to because the temporary measure applied to him.

[31] Section 12(2.1) of the EI Act applied to claimants whose benefit period began during the period beginning on September 27, 2020, and ending on September 25, 2021. Since the Claimant's benefit period began on October 4, 2020, this provision applied to him and he was entitled to a maximum of 50 weeks of benefits.

[32] The General Division had no choice but to conclude the Claimant was only entitled to a maximum of 50 weeks of regular benefits.[15]

[33] There is no arguable case that the General Division based its decision on an error of fact or made an error of law when it applied section 12(2.1) of the EI Act to the Claimant and concluded he was entitled to a maximum of 50 weeks of regular benefits.

[34] Aside from the Claimant's argument concerning the regional rate of unemployment, I have reviewed the documentary record and the audio recording from the General Division hearing. I have not found any key evidence that the General Division ignored or misinterpreted when it decided the Claimant was entitled to 50 weeks of EI regular benefits.[16] The General Division's findings are consistent with the evidence that was before it.

[35] The Claimant has not identified any other errors of fact or law or any errors of jurisdiction. The Claimant has not pointed to any procedural unfairness and I see no evidence that the General Division proceeded in an unfair way.

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[15] See section 12(2.1) of the EI Act.
[16] The Federal Court has recommended such a review be done in *Karadeolian v Canada (Attorney General),* 2016 FC 615.

[36] After reviewing the record, the decision of the General Division and considering the arguments the Claimant made in support of his request for leave to appeal, I find that the appeal has no reasonable chance of success. So, I am refusing permission to appeal.

Conclusion

[37] I am refusing permission to appeal. This means that the appeal will not proceed.

Charlotte McQuade
Member, Appeal Division