



Citation: *BT v Canada Employment Insurance Commission*, 2022 SST 949

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

### **Decision**

**Applicant:** B. T.

**Respondent:** Canada Employment Insurance Commission  
**Representative:** Melanie Allen

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**Decision under appeal:** General Division decision dated May 31, 2022  
(GE-22-957)

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**Tribunal member:** Shirley Netten

**Decision date:** September 27, 2022

**File number:** AD-22-429

## Decision

[1] An extension of time to apply for leave (permission) to appeal is granted. Permission to appeal is granted. On consent, the appeal is allowed.

## Background

[2] Service Canada<sup>1</sup> denied the Claimant, B. T., employment insurance (EI) benefits because he did not have the 420 insurable hours needed to qualify. The General Division dismissed the Claimant's appeal after deciding that the Claimant had only 413 hours of insurable employment. At the same time, the General Division noted that an amended Record of Employment from a former employer might change the outcome.

[3] The Claimant asked to appeal the General Division decision to the Appeal Division. I am allowing his appeal.

### **I am extending the time for filing the application**

[4] The Claimant filed his application beyond the 30-day deadline.<sup>2</sup> One of the factors to consider when deciding whether to accept a late application is whether it discloses an arguable case.<sup>3</sup> As outlined below, there was an arguable case that the General Division made an error. I am satisfied that the interests of justice are served by granting the extension of time for filing the application.<sup>4</sup>

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

[5] After a settlement conference, the Canada Employment Insurance Commission (Commission) and the Claimant agreed that the Claimant has enough insurable hours for a benefit period starting September 19, 2021. They agreed to resolve this appeal as follows:

- Permission to appeal is granted

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<sup>1</sup> Service Canada acts on behalf of the Canada Employment Insurance Commission.

<sup>2</sup> See section 57(1)(a) of the *Department of Employment and Social Development Act*.

<sup>3</sup> See *Canada (Minister of Human Resources Development) v Gattellaro*, 2005 FC 833.

<sup>4</sup> See *Canada (Attorney General) v Larkman*, 2012 FCA 204.

- The Claimant's appeal is allowed based on an error of jurisdiction (the General Division should not have decided the number of hours of insurable employment, which the Claimant disputed)
- The General Division decision is rescinded (cancelled).

## **I accept the proposed outcome**

[6] Only the Canada Revenue Agency, and not the General Division, can rule on the number of insurable hours when that number is in dispute.<sup>5</sup> So, the General Division acted beyond its jurisdiction when it decided that the Claimant had only 413 hours of insurable employment.<sup>6</sup> Not only was this number disputed by the Claimant, the General Division was aware of a revised Record of Employment that could (and, it turns out, did) change that number.

[7] The simplest way to fix this error is simply to rescind the General Division decision.<sup>7</sup> This leaves the Commission free to establish a benefit period for the Claimant based on the revised insurable hours of employment.

## **Conclusion**

[8] An extension of time is granted. Permission to appeal is granted. The appeal is allowed. The General Division decision is rescinded.

Shirley Netten  
Member, Appeal Division

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<sup>5</sup> See sections 90 and 90.1 of the *Employment Insurance Act*.

<sup>6</sup> An error of jurisdiction is one of the possible grounds of appeal to the Appeal Division. See section 58(1)(a) of the *Department of Employment and Social Development Act*.

<sup>7</sup> I have this power under section 59(1) of the *Department of Employment and Social Development Act*.