Citation: *MG v Canada Employment Insurance Commission*, 2022 SST 1206

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	M. G.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated October 31, 2022 (GE-21-2186)

Tribunal member:	Janet Lew
Decision date:	November 7, 2022
File number:	AD-22-796

Decision

[1] Leave (permission) to appeal is refused because the appeal does not have a reasonable chance of success. The appeal will not proceed.

Overview

[2] The Applicant, M. G. (Claimant), is appealing the General Division decision of October 31, 2022. The General Division found that the Claimant did not have sufficient insurable hours to qualify for Employment Insurance regular benefits as of March 21, 2021.

[3] The Claimant argues that the General Division made legal and factual errors. The Claimant argues that the General Division erred in finding that he had to have a sufficient number of hours under the *Employment Insurance Act* to qualify for Employment Insurance benefits. He also says that it erred in finding that he did not have enough hours.

[4] The Claimant says that he had enough hours to qualify for benefits. Even so, he says that this was an irrelevant consideration anyways. He argues that he is entitled to Employment Insurance benefits under an *Agreement on Social Security Between Canada and Ireland* (Agreement).[1]

[5] Before the Claimant can move ahead with his appeal, I have to decide whether the appeal has a reasonable chance of success.[2] Having a reasonable chance of success is the same thing as having an arguable case.[3] If the appeal does not have a reasonable chance of success, this ends the matter.

[6] I am not satisfied that the appeal has a reasonable chance of success. Therefore, I am not giving permission to the Claimant to move ahead with his appeal.

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[1] *Agreement on Social Security Between Canada and Ireland*, E102203-CTS 1992 No. 6.
[2] Under section 58(2) of the *Department of Employment and Social Development Act* (DESD Act), I am required to refuse permission if am satisfied, “that the appeal has no reasonable chance of success.”
[3] See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

Issues

[7] The issues are as follows:

a) Is there an arguable case that the General Division failed to consider whether the *Agreement on Social Security Between Canada and Ireland* applies in Employment Insurance cases?

b) Is there an arguable case that the General Division made a factual error regarding the Claimant's insurable hours?

Analysis

[8] The Appeal Division must grant permission to appeal unless the appeal has no reasonable chance of success. A reasonable chance of success exists if there is a possible jurisdictional, procedural, legal, or certain type of factual error.[4]

[9] Once an applicant gets permission from the Appeal Division, they move to the actual appeal. There, the Appeal Division decides whether the General Division made an error. If it decides that the General Division made an error, then it decides how to fix that error.

Is there an arguable case that the General Division failed to apply the *Agreement on Social Security Between Canada and Ireland*?

[10] The Claimant argues that the Agreement applies in his case. For that reason, he argues that the General Division made an error when it failed to apply the Agreement. He says that, if the General Division had applied the Agreement, it would have determined that he was entitled to receive Employment Insurance benefits.

[11] There is no merit to this argument. The fact that the Agreement stipulates that both countries have "Resolved to co-operate in the field of Social Security,"[5] or the fact

[4] See section 58(1) of the DESD Act. For factual errors, the General Division had to have based its decision on an error that it made in a perverse or capricious manner, or without regard for the evidence before it.
[5] See preamble to Agreement.

that deductions for Pay Related Social Insurance (the Irish equivalent of Employment Insurance contributions) were withheld from source for the duration of the Claimant's employment, has no bearing on determining eligibility to receiving Employment Insurance benefits.

[12] There was no basis for the General Division to consider, let alone apply, the Agreement. Quite simply, the Agreement does not address the issue of Employment Insurance benefits, whereas it specifically addresses Old Age Security of Canada and the Canada Pension Plan.

[13] The *Employment Insurance Act* sets out the qualifying requirements. It is a very elementary concept: If claimants are seeking benefits under the *Employment Insurance Act*, they must meet the requirements under that Act to qualify for those benefits.

[14] I am not satisfied that there is an arguable case that the General Division failed to apply the Agreement.

Is there an arguable case that the General Division made a factual error regarding the Claimant's insurable hours?

[15] The Claimant argues that he has 34 weeks of insurable employment within his qualifying period,[6] for the purposes of the *Employment Insurance Act*. He accumulated these weeks of employment when he worked in Ireland. And, he says that Revenue Ireland declared that he had 34 weeks of insurable employment.

[16] The General Division found that the Claimant did not have any insurable hours in his qualifying period. It based its findings on a Tax Court of Canada ruling and the Claimant's evidence that he did not have other insurable employment during his qualifying period.[7]

[6] The General Division found that the Claimant's qualifying period ran from March 22, 2020 to March 20, 2021.
[7] See General Division decision, at paras 26 and 27, citing Claimant's evidence at RGD10-25 to GDD10-26.

[17] The General Division was bound by the Tax Court's ruling on the insurability of the Claimant's hours of employment outside Canada.[8]

[18] The Tax Court confirmed the decision made by the Minister of National Revenue on January 10, 2022, "on the basis that the [Claimant's employment] during the period from November 1, 2019 to August 31, 2020 was not insurable employment under section 5 of the [*Employment Insurance Act*]."[9]

[19] The Minister of National Revenue had explained that the Claimant's employment was not insurable because the employment was outside Canada and it did not meet the conditions of section 5 of the *Employment Insurance Regulations*.[10]

[20] The General Division (and the Appeal Division for that matter) does not have any jurisdiction to consider whether the Claimant's employment outside Canada constituted hours of insurable employment for the purposes of the *Employment Insurance Act*.

[21] I am not satisfied that there is an arguable case that the General Division made an error regarding the Claimant's insurable hours.

Conclusion

[22] Permission to appeal is refused. This means that the appeal will not be going ahead.

Janet Lew
Member, Appeal Division

[8] See *Canada (Attorney General) v Haberman*, 2000 CanLII 15802, which has been followed by *Canada (Attorney General) v Didiodato*, [2002] F.CJ. No. 1321 (FCA), *Canada (Attorney General) v Thiara*, [2001] F.CJ. No. 1881 (FCA), *Canada (Attorney General) v Tuomi*, [2000] F.CJ. No. 1570 (FCA), *Canada (Attorney General) v Hawryluk*, 2000 CanLII 15606 (FCA), and *Canada (Attorney General) v Romano*, 2008 FCA 117.
[9] See *M.F.G. v Minister of National Revenue*, 2022-384 (EI), at RGD07-2.
[10] See decision of Minister of National Revenue, dated January 10, 2022, at RGD10-28.