Citation: *AA v Canada Employment Insurance Commission*, 2022 SST 1540

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

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

Decision under appeal:	General Division decision dated October 27, 2022 (GE-22-2935)

Tribunal member:	Melanie Petrunia
Decision date:	December 30, 2022
File number:	AD-22-878

Decision

[1] Leave (permission) to appeal is refused. The appeal will not proceed.

Overview

[2] The Applicant, A. A. (Claimant), stopped working when her child was born on April 24, 2022. She applied for employment insurance (EI) benefits on June 3, 2022. The Respondent, the Canada Employment Insurance Commission (Commission), decided that the Claimant didn't qualify for EI benefits because she did not have enough hours of insurable employment in her qualifying period.

[3] The Claimant requested a reconsideration and the Commission maintained its decision. The Claimant appealed to the Tribunal's General Division. The General Division dismissed the Claimant's appeal. It found that the Claimant had not worked enough hours to qualify for EI benefits.

[4] The Claimant is now asking to appeal the General Division decision to the Tribunal's Appeal Division. However, she needs permission for her appeal to move forward. The Claimant argues the General Division didn't follow procedural fairness and based its decision on an important error of fact.

[5] I have to decide whether there is some reviewable error of the General Division on which the appeal might succeed. I am refusing leave to appeal because the Claimant's appeal has no reasonable chance of success.

Issues

[6] The issues are:

a) Is there an arguable case that the General Division didn't follow procedural fairness?

b) Is there an arguable case that the General Division based its decision on an important error of fact?

c) Does the Claimant raise any other reviewable error of the General Division upon which the appeal might succeed?

Analysis

[7] The legal test that the Claimant needs to meet on an application for leave to appeal is a low one: Is there any arguable ground on which the appeal might succeed?[1]

[8] To decide this question, I focused on whether the General Division could have made one or more of the relevant errors (or grounds of appeal) listed in the *Department of Employment and Social Development Act* (DESD Act).[2]

[9] An appeal is not a rehearing of the original claim. Instead, I must decide whether the General Division:

a) failed to provide a fair process;

b) failed to decide an issue that it should have, or decided an issue that it should not have;

c) based its decision on an important factual error;[3] or

d) made an error in law.[4]

[10] Before the Claimant can move on to the next stage of the appeal, I have to be satisfied that there is a reasonable chance of success based on one or more of these grounds of appeal. A reasonable chance of success means that the Claimant could

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[1] This legal test is described in cases like *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12 and *Ingram v Canada (Attorney General)*, 2017 FC 259 at para 16.
[2] DESD Act, s 58(2).
[3] The language of section 58(1)(c) actually says that the General Division will have erred if it bases its decision on a finding of fact that it makes in a perverse or capricious manner or without regard for the material before it. The Federal Court has defined perverse as "willfully going contrary to the evidence" and defined capricious as "marked or guided by caprice; given to changes of interest or attitude according to whim or fancies; not guided by steady judgment or intent" *Rahi v Canada (Minister of Citizenship and Immigration)* 2012 FC 319.
[4] This paraphrases the grounds of appeal.

argue her case and possibly win. I should also be aware of other possible grounds of appeal not precisely identified by the Claimant.[5]

There is no arguable case that the General Division erred

[11] In her request for leave to appeal, the Claimant argues that she would have had enough insurable hours if her baby was not born prematurely at 26 weeks. She was in the hospital for 129 days and struggled for the first few months of her life. The Claimant says that she would have had no trouble qualifying for benefits if her child was born at full term. The situation was out of her control and she is asking for compassion.[6]

[12] In its decision, the General Division considered the Claimant's argument that she would have worked enough hours if her child had not been born prematurely. It recognized that the Claimant expected her child to be born August 1, 2022 and would have had no trouble accumulating the required 420 hours of insurable employment.[7]

[13] The General Division stated that it was sympathetic to the Claimant's circumstances. It found that it is required to follow the law and cannot re-write or interpret it in a way that contradicts the plain meaning.[8] The General Division found that the law is clear and the Claimant did not have enough insurable hours to qualify for benefits.

[14] I agree with the General Division that the Claimant's circumstances are unfortunate. However, there is no arguable case that the General Division failed to follow procedural fairness, or made any other relevant error, when it found that it was bound to apply the law as written.

[15] The Claimant also argues that the General Division did not take into account that her qualifying period should have been extended because of periods when she was

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[5] *Karadeolian v Canada (Attorney General)*, 2016 FC 615; J*oseph v Canada (Attorney General)*, 2017 FC 391.
[6] AD1-4
[7] General Division decision at para 29.
[8] General Division decision at para 30.

unable to work due to COVID-19 quarantines. She says that her child's school was remote and she was moving, which required her to stay home to take care of him.[9]

[16] The Claimant applied for benefits on June 3, 2022.[10] The Commission determined that her qualifying period was from May 30, 2021 to May 28, 2022.[11] There are certain circumstances set out in the EI Act that allow for the qualifying period to be extended.[12] The General Division considered whether any of these circumstances applied to the Claimant.[13]

[17] The General Division found that the Claimant did not meet any of the circumstances for her qualifying period to be extended. It noted that the Claimant argued that she could not work during some of the qualifying period due to public health guidelines.[14] However, the Claimant testified that she did not meet any of the conditions outlined in the EI Act. The General Division found that her qualifying period is May 30, 2021 to May 28, 2022.[15]

[18] The General Division also considered that the Claimant had stopped working on April 24, 2022. It noted that the Commission considered antedating, or backdating, her claim to that date. This would make the Claimant's qualifying period April 25, 2021 to April 23, 2022. It stated that the Claimant would still not have enough insurable hours to qualify for EI benefits if her claim was antedated.[16]

[19] There is no arguable case that the General Division based its decision on an important error of fact, or failed to follow procedural fairness, when it found that the Claimant's qualifying period could not be extended.

[20] The circumstances that the Claimant refers to in her request for leave to appeal do not allow for an extension to the qualifying period. The EI Act is clear about when the

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[9] AD1-4
[10] GD3-20
[11] General Division decision at para 19.
[12] See section 8(2) EI Act.
[13] General Division decision at para 21.
[14] General Division decision at para 20.
[15] General Division decision at para 22.
[16] General Division decision at para 27.

qualifying period can be extended. As discussed above, the General Division is required to follow the law even though the Claimant's circumstances are sympathetic.

[21] There is no arguable case that the General Division failed to follow procedural fairness or based its decision on an important mistake about the facts. Aside from the Claimant's arguments, I have also considered other grounds of appeal. The Claimant has not pointed to any errors of jurisdiction and I have not identified any such errors. There is no arguable case that the General Division made any errors of law in its decision.

[22] The Claimant has not identified any errors of the General Division upon which the appeal might succeed. As a result, I am refusing leave to appeal.

Conclusion

[23] Permission to appeal is refused. This means that the appeal will not proceed.

Melanie Petrunia
Member, Appeal Division