



Citation: *BB v Canada Employment Insurance Commission*, 2023 SST 24

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: B. B.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated November 3, 2022
(GE-22-2336)

Tribunal member: Melanie Petrunia

Decision date: January 3, 2023

File number: AD-22-897

Decision

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

Overview

[2] The Applicant, B. B. (Claimant), applied for regular employment insurance (EI) benefits. The Respondent, the Canada Employment Insurance Commission (Commission) decided that he did not qualify for benefits because he did not have enough insurable hours in his qualifying period.

[3] The Claimant appealed the Commission's decision to the Tribunal's General Division. The General Division dismissed the appeal. It found that the Claimant has not worked enough hours to qualify for benefits.

[4] The Claimant is now asking to appeal the General Division decision to the Tribunal's Appeal Division. However, he needs permission for his appeal to move forward. The Claimant argues the General Division 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.

Issue

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

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.

⁵ *Karadeolian v Canada (Attorney General)*, 2016 FC 615; *Joseph v Canada (Attorney General)*, 2017 FC 391.

Background

[11] The Claimant had received EI parental benefits in February 2021 for approximately six weeks. He lost his job in late April 2021 and received EI regular benefits from June 2021 to February 2022. When these benefits ended, the Claimant applied for regular EI benefits on February 14, 2022.⁶

[12] The Commission decided that the Claimant's qualifying period was the 52-week period before his benefit period would start: February 7, 2021 to February 5, 2022.⁷ It decided that the Claimant had 252 hours of insurable employment in his qualifying period based on the Record of Employment (ROE) issued by his employer.⁸

[13] At the hearing before the General Division, the Claimant argued that the hours indicated on his ROE may not be correct. The Canada Revenue Agency makes decisions about the number of insurable hours a Claimant has for the purposes of the EI Act.⁹ The General Division member put the file in abeyance (on hold) while the Commission requested a ruling from CRA on the number of insurable hours the Claimant had in his qualifying period.

[14] The CRA made a ruling that the Claimant had 210 insurable hours in his qualifying period. The General Division found that the Claimant's qualifying period was from February 7, 2021 to February 5, 2022. Based on the CRA ruling, it found that the Claimant had 210 insurable hours, but needed 420 hours to qualify for EI regular benefits.

There is no arguable case that the General Division erred

[15] In his request for leave to appeal, the Claimant argues that the General Division based its decision on an important error of fact. He argues that the employer isn't giving the actual hours and made a mess of his situation because of his parental leave. The Claimant says that he should not be penalized for taking parental leave. He argues that

⁶ General Division decision at para 24.

⁷ General Division decision at para 20.

⁸ General Division decision at para 27.

⁹ Section 90 of the EI Act.

he was never informed that parental leave would start a claim and effect the number of hours he would have when he lost his job.¹⁰

[16] The Claimant says that all of the 2020 and 2021 hours worked should be taken into account. He has paid into EI with his severance and pension contributions. He argues that the decision was based only on the hours found by Service Canada and did not take into account the other facts in his situation.¹¹

[17] The Claimant's arguments do not have a reasonable chance of success. The Claimant argued at the General Division that his qualifying period should be from April 27, 2020 to April 26, 2021 or from June 7, 2021 to June 6, 2021.¹² The General Division considered the Claimant's position but found that the application for EI benefits was made on February 14, 2022.¹³ The Claimant also testified that he received EI benefits from June 2021 to February 2022.¹⁴

[18] The General Division decided that the Commission had correctly determined that the Claimant's qualifying period was from February 7, 2021 to February 5, 2022. There is no arguable case that the General Division based this decision on any factual errors. The General Division noted that the Claimant's hours before the qualifying period were likely already used to establish his previous EI claim.¹⁵

[19] When the Claimant raised a concern that his ROE may not be correct, a ruling was requested from CRA. It is well established that CRA has exclusive jurisdiction to make a determination about a claimant's hours of insurable employment.¹⁶ The General Division correctly found that it is bound by CRA's ruling on the hours of insurable employment. There is no arguable case that the General Division based its decision on any important errors of fact, or failed to take into account any relevant facts.

¹⁰ AD1-6

¹¹ AD1-6

¹² General Division decision at paras 22 and 23.

¹³ General Division decision at para 25.

¹⁴ General Division decision at para 26.

¹⁵ General Division decision at para 26.

¹⁶ See *Canada (Attorney General) v Romano*, 2008 FCA 117; *Canada (Attorney General) v Didiodato*, 2002 FCA 345; *Canada (Attorney General) v Haberman*, A-717-98.

[20] Aside from the Claimant's arguments, I have also considered the other grounds of appeal. The Claimant has not pointed to any procedural unfairness on the part of the General Division and I see no evidence of procedural unfairness. There is no arguable case that the General Division made an error of jurisdiction. I have not identified any errors of law by the General Division in its decision.

[21] 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

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

Melanie Petrunia
Member, Appeal Division