



[TRANSLATION]

Citation: *HG v Canada Employment Insurance Commission*, 2023 SST 308

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

# **Leave to Appeal Decision**

**Applicant:** H. G.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated  
January 23, 2023 (GE-22-3567)

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**Tribunal member:** Pierre Lafontaine

**Decision date:** March 17, 2023

**File number:** AD-23-129

## **Decision**

[1] Permission to appeal is refused. The appeal will not proceed.

## **Overview**

[2] On May 1, 2022, the Applicant (Claimant) established a benefit period after working for various employers. He completed his university studies in March 2019. He has published writings since his doctoral thesis.

[3] The Respondent (Commission) decided that the Claimant was self-employed but that he could not live off this work. This meant that he was entitled to benefits. However, he had to declare the income from his writing activities. The Claimant appealed the reconsideration decision to the General Division because he disagrees that he is self-employed.

[4] The General Division found that the Claimant was self-employed within the meaning of the law.

[5] The Claimant seeks permission from the Appeal Division to appeal the General Division decision. He argues that the General Division made an error of fact or law.

[6] I have to decide whether there is an arguable case that the General Division made a reviewable error based on which the appeal has a reasonable chance of success.

[7] I am refusing permission to appeal because the Claimant has not raised a ground of appeal based on which the appeal has a reasonable chance of success.

## **Issue**

[8] Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

## Analysis

[9] Section 58(1) of the *Department of Employment and Social Development Act* specifies the only grounds of appeal of a General Division decision. These reviewable errors are the following:

1. The General Division hearing process was not fair in some way.
2. The General Division did not decide an issue it should have decided. Or, it decided something it did not have the power to decide.
3. The General Division based its decision on an important error of fact.
4. The General Division made an error of law when making its decision.

[10] An application for permission to appeal is a preliminary step to a hearing on the merits. It is an initial hurdle for the Claimant to meet, but it is lower than the one that must be met at the hearing of the appeal on the merits. At the permission to appeal stage, the Claimant does not have to prove his case; he must instead establish that the appeal has a reasonable chance of success. In other words, he must show that there is arguably a reviewable error based on which the appeal might succeed.

[11] I will give permission to appeal if I am satisfied that at least one of the Claimant's stated grounds of appeal gives the appeal a reasonable chance of success.

### **Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?**

[12] The Claimant disagrees that he is self-employed. He says that it is not a job but a mandatory activity as part of his studies. So, he cannot be considered self-employed when he writes and publishes writings related to his studies.

[13] The General Division found that the Claimant could not earn a living from his income as a writer. However, it found that he had to report his income to the

Commission because he was self-employed within the meaning of the law when he wrote.

[14] On July 7, 2022, the Claimant told the Commission that, since finishing university, he had been writing and publishing books with the goal of becoming a philosophy professor. He mentioned spending a few hours a week writing when he had free time. In doing so, he hopes to publish enough to get an academic job.<sup>1</sup>

[15] In a letter dated August 9, 2022, the Claimant's professor confirmed that the Claimant had just completed two writings in political philosophy that were in the process of being published. The purpose of this significant work was to ensure elements that were vital to his résumé to get a job in academia.<sup>2</sup>

[16] On October 24, 2022, the Claimant said that he had paid €4,000 out of his own pocket to have his writings published in France. The books have been available online since October 2022.<sup>3</sup>

[17] The Claimant said that he was entitled to 10% of the retail price before tax.<sup>4</sup> In July 2022, he went to the United States to give an academic presentation on his book at a conference.<sup>5</sup>

[18] Although the Claimant is of the opinion that he is not self-employed within the meaning of the law, the evidence on file shows the opposite. He completed his studies. He works for himself when he does bibliographic research, writes his books, takes steps to get his writings edited and published, invests money, spends time promoting his writings, and signs agreements to possibly earn income from his writing activities. When it comes to the "self-employed" designation, it is irrelevant that the work is not very profitable or is done with the goal of one day getting a teaching job.

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<sup>1</sup> See GD3-14.

<sup>2</sup> See GD3-19.

<sup>3</sup> See GD3-29.

<sup>4</sup> See GD3-32 and GD3-36, article 6.4 of the contracts for the production and publication of writings.

<sup>5</sup> See GD3-29.

[19] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for permission to appeal, I find that the appeal has no reasonable chance of success. The Claimant has not raised any issue that could justify setting aside the decision under review.

## **Conclusion**

[20] Permission to appeal is refused. The appeal will not proceed.

Pierre Lafontaine  
Member, Appeal Division