



Citation: *CT v Canada Employment Insurance Commission*, 2023 SST 258

**Social Security Tribunal of Canada
Appeal Division**

Leave to Appeal Decision

Applicant: C. T.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated January 6, 2022
(GE-22-3912)

Tribunal member: Stephen Bergen

Decision date: March 9, 2023

File number: AD-23-69

Decision

[1] I am refusing leave (permission) to appeal. The appeal will not proceed.

Overview

[2] C. T. is the Applicant for leave to appeal. He is also the one who claimed Employment Insurance (EI) benefits, so I will refer to him as the Claimant. In response to his application for benefits, the Canada Employment Insurance Commission (Commission) decided that he did not have sufficient hours of insurable employment to qualify.

[3] The Claimant required more hours to qualify than usual, because he had had Notices of Violation from earlier claims. Because the Claimant did not have enough hours, the Commission could not establish a benefit period.

[4] The Claimant asked the Commission to reconsider but it would not change its decision. Next, the Claimant appealed to the General Division. The General Division dismissed his appeal. The Claimant is now requesting leave to appeal the General Division decision to the Appeal Division.

[5] I am refusing leave to appeal because the Claimant does not have a reasonable chance of success on appeal. He has not made out an arguable case that the General Division made an error of jurisdiction or that it made an error of law.

Issues

[6] Is there an arguable case that the General Division made an error of jurisdiction?

[7] Is there an arguable case that the General Division made an error of law?

I am not giving the Claimant permission to appeal

[8] For the Claimant's application for leave to appeal to succeed, his reasons for appealing must fit within the "grounds of appeal." To grant this application for leave and

permit the appeal process to move forward, I must find that there is a reasonable chance of success on one or more grounds of appeal.

[9] The grounds of appeal identify the kinds of errors that I can consider. I may consider only the following errors:

- a) The General Division hearing process was not fair in some way.
- b) The General Division did not decide an issue that it should have decided. Or, it decided something it did not have the power to decide (error of jurisdiction).
- c) The General Division based its decision on an important error of fact.
- d) The General Division made an error of law when making its decision.¹

[10] The Courts have equated a reasonable chance of success to an “arguable case.”²

Jurisdiction

[11] When the Claimant selected from the grounds of appeal on the application form, he selected an error of jurisdiction. However, he did not explain why he believed the General Division made an error of jurisdiction.

[12] I note that the Application to the Appeal Division gives a plain-language explanation for the error of jurisdiction. It says that the General Division did not decide something it had to decide, or it decided something it did not have the power to decide.

[13] The Application also provides a space for an applicant to provide a more detailed explanation of how the General Division made an error. I read what the Applicant wrote, but I was unable to understand why he thought the General Division made an error of jurisdiction. I sent the Claimant a letter on January 30, 2023, inviting him to tell me more about the jurisdictional error. I gave the Claimant until February 13, 2023, to respond.

¹ This is a plain language version of the three grounds. The full text is in section 58(1) of the *Department of Employment and Social Development Act*.

² See *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; *Ingram v Canada (Attorney General)*, 2017 FC 259.

[14] Appeal Division staff called the Claimant on February 13, 2023, to remind him of the deadline. The Claimant called back the same day and spoke to a Registry Officer. He said that he did not understand why the reasons he had already provided were not sufficient. He also questioned why the Appeal Division will only consider the reasons that it identified in its letter.

[15] The Appeal Division granted him an extension to February 27, 2023, to give him more time to explain the reason he was appealing the General Division decision. He did not respond to the extension or give any additional reason for appealing.

[16] The General Division may only make decisions on the issues that arise from the reconsideration decision (that is on appeal).³ In this case, the General Division had to decide if the Claimant had sufficient hours to establish a benefit period. To do so, it had to determine whether the past Notices of Violation affected the number of weeks of insurable employment required to qualify for benefits.

[17] I recognize that the Claimant disagrees with the Notices of Violation that he had received from the Commission.⁴ However, these Notices had not been reconsidered by the Commission at the time the General Division heard the appeal, and those issues were not before the General Division.

[18] The General Division considered whether the Claimant had sufficient hours to qualify for benefits, given his past violations. There is no arguable case that it had jurisdiction to consider some other issue, or that it improperly considered some issue that it should not have considered

Error of Law

[19] To establish a benefit period, the Commission must determine that a Claimant has sufficient hours of insurable employment within his or her qualifying period. The

³ See section 113 of the *Employment Insurance Act* (EI Act).

⁴ The Commission pointed out that the Claimant is requesting reconsideration of the violations at GD4-3, Request for reconsideration is at GD3-42.

number of hours required depends on the region in which the Claimant resides, and the rate of unemployment for that region.⁵

[20] The Claimant did not dispute that he lived in Southern Alberta or that the regional rate of unemployment in Southern Alberta was 6.2% at the relevant time. He did not dispute that his qualifying period ran from September 26, 2021, to September 24, 2022, or that he had accumulated 710 hours of insurable employment in that period.

[21] It is a matter of record that the Commission notified the Claimant of his first violation on June 21, 2016,⁶ that it notified him of a subsequent violation on September 1, 2017,⁷ and then notified him of another subsequent violation on October 23, 2018.⁸ In the General Division hearing, the member led the Claimant through the Notices of Violation on the Commission file.

[22] The Claimant did not dispute that the Commission had issued any of the Notices, but he feels that he has repaid the Commission all that he owes. The Claimant disagrees that those violations should affect the number of hours required to qualify for benefits.

[23] When a claimant makes a false or misleading statement to the Commission, the Commission may give the claimant a "Notice of Violation." This is separate from any overpayment a claimant may have to repay or from the assessment of any penalty. Violations have nothing to do with repayment. They affect the number of hours a claimant requires to qualify for subsequent claims.

[24] Where a claimant has one or more violations in the 260 weeks before applying for benefits, the number of hours of insurable employment required to qualify for

⁵ This is found in a table in section 7 of the EI Act.

⁶ See GD3-30

⁷ See GD3-36.

⁸ See GD3-36.

benefits increases.⁹ It does not matter if the claimant has repaid any overpayments or paid any assessed penalties.

[25] The Commission considers the impact of a subsequent violation on two initial claims, but not more than two initial claims.¹⁰

[26] According to the table in section 7.1, a claimant with a subsequent violation who lives in an area with an unemployment rate between 6% and 7%, requires 1330 hours to qualify.

[27] The General Division accepted that the Claimant applied for benefits on September 28, 2022 and that his qualifying period was the period from September 26, 2021, to September 26, 2022. It accepted that the Claimant had accumulated 710 hours of insurable employment hours in that period. It also accepted that the Claimant's region was Southern Alberta and that the regional rate of unemployment at the time was 6.2%.

[28] It also accepted that this was the Claimant's second initial claim after the subsequent violation, based in part on the Claimant's testimony¹¹ It agreed that the Commission was right to consider the impact of the subsequent violation because the Claimant had more than one violation in the 260 weeks before his September 28, 2022, application. It accepted that the Notices of Violation impacted the number of hours of insurable employment hours the Claimant required.

[29] As a result, it accepted that the Claimant needed 1330 hours of insurable employment to qualify for benefits, and that he did not have sufficient hours.

[30] The Claimant has not pointed to any error of law and no error of law is apparent on the face of the decision. There is no arguable case that the General Division made an error of law.

⁹ There is another table in section 7.1 of the EI Act which shows how subsequent violations affect the required hours.

¹⁰ See Section 7.1(3) of the EI Act.

¹¹ See General Division decision at paras 21 and 22.

Conclusion

[31] I am refusing permission to appeal. This means that the appeal will not proceed.

[32] I appreciate that the Claimant does not agree with the Notices of Violation. However, the validity of the Notices of Violation is not an issue that is currently before the Tribunal. The General Division had to assume that they were valid, and so must the Appeal Division. If the Commission cancels the Notices of Violation in the future, neither this decision nor the decision of the General Division should prevent the Commission from recalculating the number of hours needed for the Claimant to qualify for benefits.

Stephen Bergen
Member, Appeal Division