



[TRANSLATION]

Citation: *SP v Canada Employment Insurance Commission*, 2023 SST 345

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

# **Leave to Appeal Decision**

**Applicant:** S. P.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated  
January 18, 2023(GE-21-1417)

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**Tribunal member:** Pierre Lafontaine

**Decision date:** March 24, 2023

**File number:** AD-23-182

## **Decision**

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

## **Overview**

[2] Since 2015, the Applicant (Claimant) has worked as a sales advisor for a window manufacturer. On November 11, 2018, he was laid off because of a shortage of work. He applied for benefits. A benefit period was established.

[3] In an investigation, the Respondent (Commission) obtained information about the Claimant's earnings during his benefit period. It also obtained his employment contract and details about his benefits.

[4] On June 8, 2021, the Commission decided that the contract continued between when the contract was signed on June 28, 2015, and November 11, 2018. It found that the Claimant did not meet one of the requirements to establish a benefit period and receive benefits. That created an overpayment. The Claimant appealed the decision to the General Division.

[5] The General Division decided that the Claimant's insurance was maintained and paid for while he was off work. It found that the Claimant had not shown that he had not received earnings for seven days. The General Division found that he was not entitled to benefits for the period starting November 11, 2018.

[6] 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.

[7] 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.

[8] 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

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

## Analysis

[10] 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 that 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.

[11] 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 has to 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. Instead, he has to establish that the appeal has a reasonable chance of success. In other words, he has to show that there is arguably a reviewable error based on which the appeal might succeed.

[12] I will grant 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?**

[13] The Claimant argues that he has shown that he stopped working for more than seven days. He says that he had the right to prefer the insurance from his job. The Claimant argues that his employment contract was reactivated each time he went back to work, including the benefits of the contract. He argues that, when he is unemployed, he loses all the benefits from his employment contract. He will prove what he says at his appeal hearing.

[14] It is well established that I have to rely on the evidence that was before the General Division in deciding the Claimant's application for permission to appeal. A hearing before the Appeal Division is not a new opportunity to present evidence. The powers of the Appeal Division are limited by law.<sup>1</sup>

[15] As the General Division noted, for the benefit period starting November 11, 2018, the Claimant had to show that he:

- 1) was laid off or separated from that employment
- 2) has not worked for seven consecutive days
- 3) has not received any earnings from his employment<sup>2</sup>

[16] The three separate conditions are cumulative and all have to be met for there to be an interruption of earnings within the meaning of the law.

[17] The earnings to be taken into account for determining whether there was an interruption of earnings are the entire income of the Claimant arising out of any employment. The value of other benefits received by the Claimant from or on behalf of his employer in respect of his employment should also be taken into account.<sup>3</sup>

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<sup>1</sup> See section 58(1) of *the Department of Employment and Social Development Act*; *Sibbald v Canada (Attorney General)*, 2022 FCA 157.

<sup>2</sup> *Perry*, 2006 FCA 258; and *Enns*, A-559-89.

<sup>3</sup> See section 35(2)(10)(d) of *the Employment Insurance Regulations*.

[18] According to the Claimant's only employment contract, group insurance will take effect after a six-month probation period. Premiums are paid (50%) by the employee and 50% by the employer.<sup>4</sup>

[19] The employer told the Commission that the Claimant had group insurance year-round.<sup>5</sup>

[20] On November 20, 2019, in an interview with the Commission, the Claimant confirmed that he was covered by the group insurance as of six months after he was hired. The coverage ended when he was laid off in May 2019. He was still covered even while he was working the equivalent of one day per week (winter).<sup>6</sup>

[21] On July 6, 2021, in another interview with the Commission, the Claimant said that, to keep his right to wage-loss insurance, the employer paid 100% of premiums, while the contract said that it had to pay only half. He said that the premiums were paid because he was taking several medications that were paid while he was laid off.<sup>7</sup>

[22] On July 7, 2021, the employer confirmed that the group wage-loss insurance remained in effect because of the terms of the work agreement. The employer paid the total amount of the premiums, but when the employee returned to work, he repaid his share of the premiums, which was 50%.<sup>8</sup>

[23] The General Division found that the Claimant did not meet all the conditions to be entitled to EI benefits. That is because the evidence shows, on a balance of probabilities, that the Claimant did not have an interruption of earnings during the period of unemployment—group insurance was maintained and paid for in part by the employer.

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<sup>4</sup> See GD3-30.

<sup>5</sup> See GD3-21.

<sup>6</sup> See GD3-37.

<sup>7</sup> See GD3-43.

<sup>8</sup> See GD3-48.

[24] I am of the view that the General Division did not make an error of fact or law, specifically when it found that there had been no interruption of earnings within the meaning of the law, since the Claimant could receive the group insurance that was still in effect after the employer laid him off.

[25] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for permission to appeal, I am of the view 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**

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

Pierre Lafontaine  
Member, Appeal Division