



[TRANSLATION]

Citation: *FA v Canada Employment Insurance Commission*, 2023 SST 748

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

# **Leave to Appeal Decision**

**Applicant:** F. A.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated April 25, 2023  
(GE-23-973)

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**Tribunal member:** Pierre Lafontaine

**Decision date:** June 9, 2023

**File number:** AD-23-426

## **Decision**

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

## **Overview**

[2] The Applicant (Claimant) applied for benefits on August 28, 2022. Two different employers sent the Respondent (Commission) Records of Employment (ROEs) for this application.

[3] When he applied, the Claimant already had an active benefit period. But he had already received the full amount of benefits he was entitled to. A new benefit period was established effective September 4, 2022.

[4] The Commission calculated the Claimant's weekly benefit rate at \$231. On reconsideration, the Commission upheld its initial decision. The Claimant disagreed with the rate and appealed the reconsideration decision to the General Division.

[5] The General Division found that the Commission had calculated the Claimant's weekly benefit rate correctly.

[6] The Claimant now seeks permission from the Appeal Division to appeal the General Division decision. He essentially argues that the General Division made an error when it calculated his benefit rate.

[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 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 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.

[12] 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?**

[13] The only issue before the General Division was the Claimant's benefit rate.

[14] The Claimant essentially argues that the General Division made an error when it calculated his benefit rate.

[15] The Claimant applied for benefits on August 28, 2022.<sup>1</sup> Between August 7 and September 10, 2022, the unemployment rate was 4.7% in Vancouver.<sup>2</sup>

[16] Weekly insurable earnings correspond to a claimant's insurable earnings in the calculation period divided by the number of weeks set out in the law. In this case, the number of weeks is 22 because the regional unemployment rate was less than 6%.<sup>3</sup>

[17] The ROEs the Claimant provided show total insurable earnings of \$9,230.64. The Commission divided this amount by 22 weeks to get average weekly insurable earnings of \$419.57.

[18] The weekly benefit rate payable to a claimant is 55% of their average weekly insurable earnings, which is \$230.77.<sup>4</sup>

[19] I am of the view that the General Division did not make any reviewable errors in calculating the Claimant's benefit rate.

[20] After reviewing the appeal file, the General Division decision, and the Claimant's arguments in support of his 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.

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<sup>1</sup> See GD3-11.

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

<sup>3</sup> See section 14(2) of the *Employment Insurance Act* (Act).

<sup>4</sup> See section 14(1) of the Act.

## **Conclusion**

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

Pierre Lafontaine  
Member, Appeal Division