



Citation: *KM v Canada Employment Insurance Commission*, 2023 SST 627

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

# **Leave to Appeal Decision**

**Applicant:** K. M.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated February 27, 2023  
(GE-22-3045)

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**Tribunal member:** Pierre Lafontaine

**Decision date:** May 24, 2023

**File number:** AD-23-292

## Decision

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

## Overview

[2] The Applicant (Claimant) applied for EI benefits in January 2022. The Canada Employment Insurance Commission (Commission) decided that the Claimant hadn't worked enough hours to qualify. Upon reconsideration, the Commission maintained its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[3] The General Division found that it did not have the authority to decide whether the Claimant's January 2022 application could be antedated. It determined that the only reconsideration decision before it regarded whether the Claimant has enough hours to qualify based on her January 2022 application. The General Division concluded that the Claimant did not have enough hours to qualify for benefits.

[4] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. She essentially submits that the General Division erred in not allowing her antedate that would have allowed her to qualify for benefits.

[5] I must decide whether there is some reviewable error of the General Division upon which the appeal might succeed.

[6] I am refusing leave to appeal because the Claimant's appeal has no reasonable chance of success.

## Issue

[7] Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

## Analysis

[8] 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 that:

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.

[9] An application for leave 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 on the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove her case but must establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, that there is arguably some reviewable error upon which the appeal might succeed.

[10] Therefore, before I can grant leave, I need to be satisfied that the reasons for appeal fall within any of the above-mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success.

### **Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?**

[11] The Claimant essentially submits that the General Division erred in not allowing her antedate that would have allowed her to qualify for benefits.

[12] The General Division found that the Claimant applied for EI benefits on January 7, 2022.

[13] The Claimant's qualifying period is the 52 weeks before January 3, 2022. So it is from January 3, 2021, to January 1, 2022.

[14] The only record of employment in the file shows that the Claimant worked 288 hours between September 20, 2020, and March 30, 2021. As only some of those hours were worked during the qualifying period, the Claimant has fewer than 288 hours in her qualifying period. The Claimant needed 420 hours to qualify.

[15] Before the General Division, the Claimant argued that an antedate should be granted so that she could benefit from an additional 300 hours in her qualifying period.<sup>1</sup> As stated by the General Division, no reconsideration decision was rendered by the Commission on the issue of antedate. It therefore had no jurisdiction to render a decision on that issue.<sup>2</sup>

[16] After reviewing the appeal docket and the General Division's decision as well as considering the Claimant's arguments in support of her request for leave to appeal, I have no choice but to find that the appeal has no reasonable chance of success.

## **Conclusion**

[17] Leave to appeal is refused. This means the appeal will not proceed.

[18] In the interest of justice, I recommend that the Commission render a formal decision on the antedate request made by the Claimant.

Pierre Lafontaine  
Member, Appeal Division

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<sup>1</sup> Section 153.17(1) of the EI Act says that a claimant who makes an initial claim for benefits (in other words, applies for benefits) on or after September 27, 2020, is deemed to have an additional 300 hours in their qualifying period.

<sup>2</sup> See section 113 of the *Employment Insurance Act*.