



[TRANSLATION]

Citation: *MB v Canada Employment Insurance Commission*, 2023 SST 934

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

# **Leave to Appeal Decision**

**Applicant:** M. B.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated  
May 1, 2023 (GE-22-3909)

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**Tribunal member:** Pierre Lafontaine

**Decision date:** July 18, 2023

**File number:** AD-23-438

## Decision

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

## Overview

[2] On September 5, 2020, the Applicant (Claimant) stopped working because of the pandemic. He applied for Employment Insurance (EI) benefits on August 17, 2021.

[3] On August 18, 2021, the Respondent (Commission) denied him EI benefits because he did not have enough hours of insurable employment in his qualifying period. He had worked 391 hours during that period but needed 420. The Commission also denied him an antedate to September 6, 2020. It decided that he had not shown good cause for applying late throughout the entire period of the delay.

[4] On September 8, 2021, the Claimant asked the Commission to reconsider, alleging that he had worked 640 hours that were not paid. He mentioned appealing to the Tax Court of Canada (TCC). The Commission asked him to submit evidence of his appeal to the TCC. He did not respond. Because of this, the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the Tribunal's General Division.

[5] After a first negative decision by the General Division, the Claimant appealed to the Appeal Division. He argued that he had not received anything related to his request for an in-person hearing. He said that he had documents to submit at the hearing and that witnesses and a lawyer would be there.

[6] On December 5, 2022, the Appeal Division decided to allow the Claimant's appeal and send the file back to the General Division for reconsideration.

[7] During the reconsideration, the General Division found that the Claimant was not cooperating with the Tribunal. He also had not shown up for his in-person hearing. It found that the Claimant had not provided the Tribunal with documents in support of his

arguments, including evidence of his appeal to the TCC. As a result, it proceeded to make its decision on the record.

[8] The General Division found that absent a contrary ruling from the TCC, the Claimant had not shown that he had worked enough hours to qualify for EI benefits. The General Division also found that the Claimant did not have enough hours to qualify on September 6, 2020. So, there was no reason to grant an antedate to September 6, 2020.

[9] The Claimant seeks permission from the Appeal Division to appeal the General Division decision. He argues that the General Division did not respect his choice to have an in-person hearing. He argues that the General Division made a decision without letting him call his witnesses and without giving him an opportunity to provide documents.

[10] 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.

[11] 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**

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

## **Analysis**

[13] 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.

[14] 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.

[15] 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?**

#### **Principle of natural justice**

[16] The Claimant argues that the General Division did not respect his choice to have an in-person hearing. He argues that the General Division made a decision without letting him call his witnesses and without giving him an opportunity to provide documents.

[17] The Claimant filed his appeal with the General Division on November 22, 2021. As a ground of appeal, he indicated that the Commission had never considered the 640 unpaid hours he had worked. He mentioned preferring an in-person hearing.

[18] On December 8, 2021, the General Division told the Claimant that there were no in-person hearings for the time being because of the pandemic. It said that his file was being held in abeyance in the meantime.

[19] On January 9, 2022, the Claimant told the General Division that it was impossible to reach him by telephone. He did not want to get any emails, and all correspondence had to be sent to him by Xpresspost, without a signature.

[20] To respect the Claimant's choice as to the type of hearing, the General Division set a hearing date of Tuesday, April 25, 2023.

[21] A notice of hearing was given to Purolator on Wednesday, March 15, 2023 (departing from Ottawa). Purolator made a first delivery attempt at 10:32 a.m. on Thursday, March 16, 2023. A second delivery attempt was made at 4:17 p.m. later that day. Since the Claimant still was not answering, a delivery notice was left at his door telling him that a package was waiting for him at a shop near his home.

[22] The Claimant never picked up the package despite the delivery notice and did not show up in person at the date and time specified in the notice of hearing.

[23] The General Division found that the Claimant had access to a telephone when necessary to contact the Commission, potential employers, or his union, but that it was impossible for the Tribunal to reach him by telephone. It found that the Claimant had no specific medical condition that would explain his refusal to be contacted by telephone.

[24] The General Division also found that the Claimant was not responding to written requests from the Commission and the Tribunal, even those mailed to him without a signature. It found that the Claimant had not provided any documents in support of his arguments since his September 8, 2021, reconsideration request to the Commission, which could have helped close his case.

[25] On the record as a whole, the General Division found that it was impossible to reach the Claimant despite the contact information he had provided. It found that he

clearly refused to help his case progress smoothly. As a result, it proceeded to make a decision on the record, as it is allowed to do under the law in such circumstances.<sup>1</sup>

[26] I see no breach of natural justice by the General Division. The Claimant was given adequate notice of the hearing and an opportunity to be heard. He knew for a long time what was being alleged by the Commission and was given an opportunity to answer those allegations, which he never did despite the many chances afforded him.

[27] The Appeal Division will not allow this ground of appeal when a party interferes with the proper conduct of their case by their conduct before the General Division.

[28] This ground of appeal has no reasonable chance of success.

### **Hours of insurable employment upon application and antedate**

[29] Absent a contrary ruling from the TCC, the General Division found that the Claimant had 391 hours of insurable employment when he applied. He needed 420 hours. As a result, he did not have enough hours of insurable employment to qualify.

[30] The General Division also found that the Claimant had not proven that he qualified for EI benefits on September 6, 2020, even in the hypothetical situation where an antedate would have been granted.

[31] I see no reviewable error made by the General Division. The General Division's findings are supported by the evidence and the law.

### **Conclusion**

[32] After reviewing the appeal record, the General Division decision, and the arguments in support of the application for permission to appeal, I find that the appeal

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<sup>1</sup> See section 9(2) of the *Social Security Tribunal Rules of Procedure*: The General Division may continue the appeal process if it cannot reach a party using the contact information the party gave. It may do this without giving further notice to the party.

has no reasonable chance of success. The Claimant has not raised any issue that could justify setting aside the decision under review.

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

Pierre Lafontaine  
Member, Appeal Division