



Citation: *DB v Canada Employment Insurance Commission*, 2023 SST 853

**Social Security Tribunal of Canada
Appeal Division**

Leave to Appeal Decision

Applicant: D. B.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated March 3, 2023
(GE-22-3714)

Tribunal member: Solange Losier

Decision date: June 26, 2023

File number: AD-23-247

Decision

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

Overview

[2] D. B. is the Claimant in this case. He applied for Employment Insurance (EI) regular benefits. The Canada Employment Insurance Commission decided that he could get 15 weeks of EI benefits.¹

[3] The General Division came to the same conclusion.² It said that the Claimant was only entitled to 15 weeks of EI benefits based on the regional rate of unemployment and the number of insurable hours he had. It also said that the 52-week qualifying period could not be extended because he was not referred by the Commission to attend his Doctor of Philosophy program.

[4] The Claimant is now asking for permission to appeal the General Division decision to the Appeal Division.³ He argues that the General Division made an error in law by quoting and ignoring sections 8(2)(c) and 59(d) of the *Employment Insurance Act* (EI Act). He also says that he should be given the benefit of the doubt and should be able to get more than 15 weeks of EI benefits.

[5] I am denying the Claimant's request for permission to appeal because it has no reasonable chance of success.

Issues

[6] Is there an arguable case that the General Division made an error of law when it did not extend the Claimant's qualifying period?

¹ See reconsideration decision at pages GD3-48 to GD3-49.

² See General Division decision at pages AD1A-1 to AD1A-8.

³ See application to the Appeal Division at pages AD1-1 to AD1-8.

[7] Is there an arguable case that the General Division made an error of law about the number of weeks of EI regular benefits to which the Claimant is entitled?

I am not giving the Claimant permission to appeal

[8] An appeal can proceed only if the Appeal Division gives permission to appeal.⁴

[9] I must be satisfied that the appeal has a reasonable chance of success.⁵ This means that there must be some arguable ground upon which the appeal might succeed.⁶

[10] I can only consider certain types of errors. I have to focus on whether the General Division could have made one or more of the relevant errors (this is called the “grounds of appeal”).⁷

[11] The possible grounds of appeal to the Appeal Division are that the General Division did one of the following:

- proceeded in a way that was unfair
- acted beyond its powers or refused to exercise those powers
- made an error in law
- based its decision on an important error of fact⁸

[12] For the appeal to proceed, I have to find that there is a reasonable chance of success on one of the grounds of appeal.

⁴ See section 56(1) of the *Department of Employment and Social Development Act* (DESD Act).

⁵ See section 58(2) of the DESD Act.

⁶ See *Osaj v Canada (Attorney General)*, 2016 FC 115.

⁷ See section 58(1) of the DESD Act.

⁸ See section 58(1) of the DESD Act.

There is no arguable case that the General Division made an error of law when it did not extend the Claimant's qualifying period

- **The General Division applied the sections of the law that were in force at the time of the Claimant's application**

[13] The qualifying period is usually the 52 weeks before a person's benefit period starts.⁹ But the law provides some specific circumstances that can extend this period.¹⁰

[14] The Claimant argues that the General Division did not correctly quote and ignored section 8(2)(c) of the EI Act.¹¹ He relies on the following version of section 8(2)(c) of the EI Act.

[15] As of December 18, 2022, section 8(2)(c) of the EI Act reads as follows:

8(2) A qualifying period mentioned in paragraph (1)(a) is extended by the aggregate of any weeks during the qualifying period for which the person proves, in such manner as the Commission may direct, that throughout the week the person was not employed in insurable employment because the person was

[...]

(c) receiving assistance under an employment support measure other than one referred to in paragraph 59(c) or (d); or

[16] The General Division had to decide what the Claimant's qualifying period was and whether it could be extended. It had to consider the date the Claimant made his application for EI benefits because that was relevant to deciding which version of section 8(2)(c) of the EI Act was applicable.

[17] The General Division decided that the Claimant's qualifying period ran from May 2, 2021, to April 30, 2022.¹² This was 52 weeks prior to the beginning of his benefit period on May 1, 2022.

⁹ See section 8 of the EI Act.

¹⁰ See section 8(2)(a)(b)(c)(d) of the EI Act.

¹¹ See AD1-4 and AD1B-2.

¹² See paragraph 20 of the General Division decision.

[18] The General Division decided that the qualifying period could not be extended more than 52 weeks.¹³ It said the Commission did not approve the Claimant's Doctor of Philosophy program, so he did not meet the criteria to extend his qualifying period.¹⁴ The Claimant told the General Division that it was a colleague who recruited him to attend the program.¹⁵

[19] For the period of June 9, 2022 to June 22, 2022, section 8(2)(c) of the EI Act read as follows:

8(2) A qualifying period mentioned in paragraph (1)(a) is extended by the aggregate of any weeks during the qualifying period for which the person proves, in such manner as the Commission may direct, that throughout the week the person was not employed in insurable employment because the person was

[...]

c) receiving assistance under employment benefits; or

[20] The General Division did not ignore or incorrectly quote section 8(2)(c) of the Act in its decision.¹⁶ It said that the qualifying period could be extended if the Claimant was "receiving assistance under employment benefits". The Claimant applied for EI benefits on June 15, 2022, so that particular version of the law was applicable to him.¹⁷ The General Division also added a footnote explaining this.¹⁸

[21] There is no arguable case that the General Division incorrectly quoted or ignored section 8(2)(c) of the EI Act. The General Division applied the law in force at the time his application for EI benefits was made.

¹³ See paragraphs 23 and 27 of the General Division decision.

¹⁴ See paragraph 24 of the General Division decision.

¹⁵ See paragraph 24 of the General Division decision and recording at 26:00.

¹⁶ See paragraph 21 of the General Division decision.

¹⁷ See page GD3-12.

¹⁸ See footnote 2 of the General Division decision where it says, "see Section 8(2) of the Act in force at the time the Appellant applied".

– **The law does not require giving the Claimant the benefit of the doubt**

[22] The Claimant says that the General Division should have given him the benefit of the doubt because his program is pertinent to the labour market in Canada.¹⁹

[23] The law allows the Commission to give the benefit of the doubt to a Claimant when they are disqualified or disentitled from EI benefits because of misconduct or because they voluntarily left a job.²⁰

[24] There is no arguable case that the General Division made a mistake by not giving the Claimant the benefit of a doubt. The Commission can only do this if he was disqualified or disentitled from EI benefits because of misconduct or because he voluntarily left a job without just cause. The Claimant's case is about the number of weeks he is entitled to, so the benefit of the doubt argument does not apply.

There is no arguable case that the General Division made an error of law about the number of weeks of EI regular benefits the Claimant was entitled to

[25] The Claimant argues that the General Division incorrectly quoted and ignored section 59(d) of the EI Act.²¹ He relies on the following version of section 59(d) of the EI Act.

[26] As of December 18, 2022, section 59(d) of the EI Act reads as follows:

59 The Commission may establish employment support measures to help insured participants and other workers, including workers in groups underrepresented in the labour market, to obtain or keep employment, including measures to:

[...]

d) support research, innovation or partnerships related to helping workers to prepare for, obtain or keep employment and to be productive participants in the labour market

¹⁹ See AD1B-2.

²⁰ See section 49(2) of the EI Act.

²¹ See page AD1B-2.

[27] However, the Claimant has not reproduced the version of section 59(d) of the EI Act that was in force on June 15, 2022, when he applied for EI benefits. The applicable version reads as follows:²²

59 The Commission may establish employment benefits to enable insured participants to obtain employment, including benefits to:

[...]

d) provide them with employment opportunities through which they can gain work experience to improve their long-term employment prospects

[28] The General Division did not refer to section 59(d) of the EI Act, but it didn't need to because it was not relevant. That section allows the Commission to establish employment benefits for "insured participants" aimed at helping them re-enter the labour force. They must meet certain criteria in law.²³ There was no evidence that the Claimant met any of the eligibility requirements.²⁴

[29] The General Division's task was to decide how many weeks of EI regular benefits the Claimant was entitled to receive.

[30] The General Division decided that the Claimant was entitled to 15 weeks of EI benefits. It considered that he had 790 hours of insurable employment during his 52 week qualifying period and that the regional rate of unemployment was 4.5%. According to the table set out in law, the General Division said he was entitled to 15 weeks of EI benefits.²⁵

[31] There is no arguable case that the General Division ignored section 59(d) of the EI Act. It did not need to refer to this section because it was not relevant as the Claimant never asked the Commission for assistance under employment benefits.

²² The file shows that he made his application for EI benefits on June 15, 2022 at page GD3-12. The section he refers to above only became in force on December 18, 2022.

²³ See section 58 of the EI Act that applied at the time the Claimant made his application (this version was in force from June 9, 2022 to June 22, 2022. It defines the criteria for an insured participant.

²⁴ See section 58 of the EI Act.

²⁵ See section 12(2) of the EI Act; Schedule I to the EI Act.

Conclusion

[32] I reviewed the file, listened to the audio recording of the General Division hearing, and examined the General Division decision.²⁶ I did not find any relevant evidence that the General Division might have ignored or misinterpreted. As well, the General Division applied the relevant sections of the law that were in force at the time.

[33] Permission to appeal is refused. This means that the appeal will not proceed.

Solange Losier
Member, Appeal Division

²⁶ The Federal Court recommends doing such a review in decisions like *Griffin v Canada (Attorney General)*, 2016 874 and *Karadeolian v Canada (Attorney General)*, 2016 FC 615.