



Citation: *XW v Canada Employment Insurance Commission*, 2023 SST 879

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

# **Leave to Appeal Decision**

**Applicant:** X. W.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated April 6, 2023  
(GE-22-2738)

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**Tribunal member:** Janet Lew

**Decision date:** July 4, 2023

**File number:** AD-23-364

## Decision

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

## Overview

[2] The Applicant, X. W. (Claimant), is appealing the General Division decision. The General Division allowed the Claimant's appeal in part. The General Division found that the Claimant was not disentitled from receiving Employment Insurance benefits between October 10, 2021 and December 23, 2021. However, the General Division found that the Claimant could not extend his benefit period and get extra weeks of regular benefits after January 22, 2022.

[3] The Claimant argues that the General Division made legal and factual errors. He argues that the General Division should have extended the benefit period and given him additional weeks of regular benefits after January 22, 2022. He says the benefit period should be extended by the same number of weeks that he received sickness benefits during his benefit period.

[4] The Claimant explained why he got sickness benefits. He had been involuntarily detained and needed time to recover "from the trauma of police brutality and hospital treatment."<sup>1</sup>

[5] Before the Claimant can move ahead with his appeal, I have to decide whether the appeal has a reasonable chance of success. In other words, there has to be an arguable case.<sup>2</sup> If the appeal does not have a reasonable chance of success, this ends the matter.<sup>3</sup>

[6] I am not satisfied that the appeal has a reasonable chance of success. Therefore, I am not giving permission to the Claimant to move ahead with his appeal.

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<sup>1</sup> Claimant's Application to the Appeal Division – Employment Insurance, at AD 1-5.

<sup>2</sup> *Fancy v Canada (Attorney General)*, 2010 FCA 63.

<sup>3</sup> Under section 58(2) of the *Department of Employment Social Development (DESD) Act*, I am required to refuse permission if I am satisfied "that the appeal has no reasonable chance of success."

## Issue

[7] Is there an arguable case that the General Division made any legal or factual mistakes when it did not extend the Claimant's benefit period?

### **I am not giving the Claimant permission to appeal**

[8] The Appeal Division must grant permission to appeal unless the appeal has no reasonable chance of success. A reasonable chance of success exists if there is a possible jurisdictional, procedural, legal, or certain type of factual error.<sup>4</sup>

[9] For factual errors, the General Division had to have based its decision on an error that it made in a perverse or capricious manner, or without regard for the evidence before it.

### **Is there an arguable case that the General Division made a legal or factual mistake when it did not extend the Claimant's benefit period?**

[10] The Claimant argues the General Division made important legal and factual mistakes when it did not extend the Claimant's benefit period.

[11] The General Division determined that benefit periods are extended only in limited circumstances. The General Division cited section 10(1) of the *Employment Insurance Act*. The General Division determined that none of the circumstances listed in section 10(1) of the *Employment Insurance Act* applied in the Claimant's case.

[12] Section 10(10) of the *Employment Insurance Act* extends a claimant's benefit period if:

- i. The claimant was confined in a jail, penitentiary or other similar institution and was not found guilty of the offence for which the claimant was being held or any other offence arising out of the same transaction;
- ii. In receipt of workers' compensation payments for an illness or injury; or

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<sup>4</sup> See section 58(1) of the DESD Act.

- iii. In receipt of payments under a provincial law on the basis of having ceased to work because continuing to work would have resulted in danger to the claimant, her unborn child, or a child whom she was breast-feeding.

[13] The General Division correctly determined that none of the circumstances listed in section 10(10) of the *Employment Insurance Act* applied to extend the Claimant's benefit period.

[14] However, there are other provisions set out in section 10 of the *Employment Insurance Act* that extend the benefit period. The General Division did not cite these other provisions. It is unclear whether the General Division examined these other provisions and considered whether the Claimant's factual circumstances applied.

[15] Even so, I find that these other provisions do not apply in the Claimant's case. For instance, an extension arises if a claimant's newborn or newly adopted child is hospitalized,<sup>5</sup> if a claimant's parental leave is deferred or if a claimant is directed to return to duty from parental leave under the *National Defence Act*,<sup>6</sup> or if a claimant receives parental benefits.<sup>7</sup>

[16] The benefit period is also extended where no regular benefits are claimed, and a claimant is paid for two or more types of special benefits for which the combined maximum total number of weeks is more than 50 and the maximum number of weeks of those benefits are not paid.<sup>8</sup>

[17] None of these factual circumstances exist in the Claimant's case. So, the Claimant's benefit period could not be extended.

[18] The Claimant suggests that the General Division overlooked the facts that led to his involuntary detention and treatment. But these facts are not relevant to any of the provisions that could have extended the benefit period.

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<sup>5</sup> Section 10(12) of the *Employment Insurance Act*.

<sup>6</sup> Section 10(12.1) of the *Employment Insurance Act*.

<sup>7</sup> Sections 10(13.01) and 10(13.02) of the *Employment Insurance Act*.

<sup>8</sup> Section 10(13) of the *Employment Insurance Act*.

[19] The Claimant does not have an arguable case that the General Division made legal or factual errors when it did not extend the Claimant's benefit period.

## **Conclusion**

[20] I am not satisfied that the appeal has a reasonable chance of success. For that reason, permission to appeal is refused. This means that the appeal will not be going ahead.

Janet Lew  
Member, Appeal Division