



Citation: *FM v Canada Employment Insurance Commission*, 2023 SST 977

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

# **Leave to Appeal Decision**

**Applicant:** F. M.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated May 23, 2023  
(GE-23-207)

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**Tribunal member:** Stephen Bergen

**Decision date:** July 25, 2023

**File number:** AD-23-569

## **Decision**

[1] I am refusing leave (permission) to appeal. The appeal will not proceed.

## **Overview**

[2] F. M. is the Applicant. He made a claim for Employment Insurance (EI) benefits so I will call him the Claimant. The Respondent, the Canada Employment Insurance Commission (Commission), denied the Claimant's claim for benefits because he had not accumulated enough hours of insurable employment within his qualifying period. When the Claimant asked the Commission to reconsider, it would not change its decision.

[3] The Claimant appealed to the General Division of the Social Security Tribunal, which dismissed his appeal. He is now seeking leave to appeal from the Appeal Division.

[4] I am refusing leave to appeal. The Claimant has not identified an arguable case that the General Division made an error in how it reached its decision.

## **Issue**

[5] Did the General Division make an error in how it reached its decision?

## **Analysis**

### **General Principles**

[6] For the Claimant's application for leave to appeal to succeed, his reasons for appealing would have to fit within the "grounds of appeal." To grant this application for leave and permit the appeal process to move forward, I must find that there is a reasonable chance of success on one or more grounds of appeal.

[7] The grounds of appeal identify the kinds of errors that I can consider. I may consider only the following errors:

- a) The General Division hearing process was not fair in some way.
- b) 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 (error of jurisdiction).
- c) The General Division based its decision on an important error of fact.
- d) The General Division made an error of law when making its decision.<sup>1</sup>

[8] The Courts have equated a reasonable chance of success to an “arguable case.”<sup>2</sup>

## **Errors**

[9] The Claimant did not argue that the General Division made an error under any particular ground of appeal, or provide the details of any error.

[10] In his application to the Appeal Division, the Claimant said only that the decision was “not to his liking.” The Appeal Division wrote to the Claimant on June 15, 2023, to ask him to explain why he was appealing the General Division decision. The Claimant responded that he was aware that he was short on hours, but he said that he felt the decision was unfair.

### **– Procedural fairness**

[11] One of the grounds of appeal is procedural fairness. However, there is no arguable case that the General Division made an error of procedural fairness.

[12] “Procedural fairness” addresses problems with the hearing process. These include concerns that the decision-maker may have been biased, or that something happened or failed to happen that interfered with the party’s right to be heard or their knowledge of the case. A claimant may believe that the decision result is unfair, but that does not mean that the hearing process was unfair.

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<sup>1</sup> This is a plain language version of the grounds of appeal. The full text is in section 58(1) of the *Department of Employment and Social Development Act* (DESDA).

<sup>2</sup> See *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; and *Ingram v Canada (Attorney General)*, 2017 FC 259.

[13] The Claimant has not identified how the hearing process was unfair.

– **Jurisdiction**

[14] There is also no arguable case that the General Division made an error of jurisdiction.

[15] The General Division may only consider the issues arising from the reconsideration decision.<sup>3</sup> The only issue in the reconsideration decision that was appealed to the General Division was whether the Claimant qualified for benefits. The General Division considered this issue. It did not consider any other issue. Therefore, it neither failed to exercise its jurisdiction nor did it go beyond its jurisdiction.

– **Error of law**

[16] There is no arguable case that the General Division made an error of law.

[17] The unemployment rate for the Eastern Nova Scotia region is 11.6%. The General Division considered the required number of hours of insurable employment that related to a rate of unemployment between 11 and 12%. According to the *Employment Insurance Act* (EI Act), the Claimant required 490 hours of insurable employment within his qualifying period.<sup>4</sup>

[18] The General Division identified the qualifying period as the 52-week period immediately preceding his benefit period, in accordance with the EI Act.<sup>5</sup> There was no evidence of any circumstances by which the Commission could have adjusted or extended the qualifying period.<sup>6</sup>

– **Important Error of fact**

[19] There is no arguable case that the General Division made an important error of fact.

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<sup>3</sup> See section 112(1) of the EI Act.

<sup>4</sup> See section 7(2) of the EI Act.

<sup>5</sup> See section 10(1) of the EI Act (for beginning of benefit period).

<sup>6</sup> See section 8 of the EI Act (to determine the qualifying period).

[20] The Claimant has not identified any error in the facts on which the General Division relied. The Claimant has not disputed that he resides within the Eastern Nova Scotia economic region (and this is consistent with the Sydney, Nova Scotia address used repeatedly in the Commission's file).<sup>7</sup> Nor has he disputed that his qualifying period should be the period from October 17, 2021, to October 15, 2022, or that he accumulated only 448 hours within the qualifying period.

[21] I appreciate that the Claimant feels that it is unfair that he should be denied benefits when he was only 42 hours short of the required 490 hours of insurable employment for his economic region. However, the qualification requirements are set out in the EI Act. The General Division had no discretion to ignore those requirements.

[22] The Claimant has not made out an arguable case that the General Division made any kind of error. He has no reasonable chance of success.

## **Conclusion**

[23] I am refusing permission to appeal. This means that the appeal will not proceed.

Stephen Bergen  
Member, Appeal Division

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<sup>7</sup> See GD3 – for example: The Application for compensation (GD3-4), Record of Employment (Gd3-18), and all correspondence.