



Citation: *AR v Canada Employment Insurance Commission*, 2023 SST 989

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

# **Leave to Appeal Decision**

**Applicant:** A. R.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated July 7, 2023  
(GE-23-1195)

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**Tribunal member:** Stephen Bergen

**Decision date:** **July 25, 2023**

**File number:** AD-23-699

## **Decision**

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

## **Overview**

[2] A. R. is the Applicant and also the benefit claimant. I will refer to him as the Claimant. He applied for Employment Insurance (EI) sickness benefits after he was injured. The Respondent, the Canada Employment Insurance Commission (Commission), refused his claim. The Commission said that the Claimant was not eligible for EI benefits because he was self-employed and did not have an agreement with the Commission to have EI insurance. The Claimant asked the Commission to reconsider, but the Commission did not change its decision.

[3] The Claimant appealed the Commission's decision to the General Division of the Social Security Tribunal, but his appeal was dismissed. He is now seeking leave to appeal to the Appeal Division.

[4] I am refusing leave to appeal. The Claimant does not have a reasonable chance of success. He has not pointed to any evidence that the General Division misunderstood or ignored, or to any other error.

## **Issue**

[5] Is there an arguable case that the General Division misunderstood or ignored that the Claimant was not aware he needed to pay into the EI program, or that he was having financial hardship?

## **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." The grounds of appeal identify the kinds of errors that I can consider.

[7] I can 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] To grant this application for leave and permit the appeal process to move forward, I must find that the Claimant has a reasonable chance of success on one or more of these grounds of appeal.

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

## **Important Error of Fact**

[10] On his Application to the Appeal Division, the Claimant selected the error that he believed the General Division made. He selected that the General Division made an error of fact. He explained that he was not aware he needed to pay into the EI program, and that he was having financial hardship since his injury.

[11] There is no arguable case that the General Division ignored or misunderstood this evidence.

[12] In paragraphs 5 and 12 of its decision, the General Division acknowledged the Claimant’s evidence that he did not know he needed to have an agreement with the Commission to get EI benefits.

[13] The General Division also acknowledged at paragraphs 5 and 17 that the Claimant was experiencing financial hardship.

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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.

[14] Even if the General Division did ignore or misunderstand this evidence, it could not have reached a different decision. As the General Division noted, it is required to follow the law. The *Employment Insurance Act* (EI Act) sets out the requirements for self-employed claimants to get benefits. It says that they must enter into an agreement with the Commission and that the agreement must be in place for at least a year.<sup>3</sup> The Claimant had no agreement with the Commission before he applied for EI benefits. He did not dispute this.

[15] I think the Claimant feels that it is unfair that he did not know he needed such an agreement, and that he believes there should be compassionate exceptions.

[16] Unfortunately, the law does not make exceptions for claimants who are not aware of its requirements or because it will cause them hardship. Both the General Division and this Appeal Division must follow the law, regardless of whether it might have consequences that seem unfair.<sup>4</sup>

[17] The Claimant has no reasonable chance of success.

## **Conclusion**

[18] I am refusing leave to appeal. This means that the appeal will not proceed.

Stephen Bergen  
Member, Appeal Division

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<sup>3</sup> See section 152.07 of the EI Act.

<sup>4</sup> *Wegener v. Canada (Attorney General)*, 2011 FC 137.