Citation: *JP v Canada Employment Insurance Commission*, 2023 SST 993

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	J. P.
Representative:	Rabbi Sidney Speakman
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated January 31, 2023 (GE-22-3654)

Tribunal member:	Candace R. Salmon
Decision date:	July 27, 2023
File number:	AD-23-159

Decision

[1] I am refusing leave (permission) to appeal because the Claimant doesn't have an arguable case. The appeal will not proceed.

Overview

[2] J. P. is the Claimant. He applied for Employment Insurance (EI) regular benefits. The Canada Employment Insurance Commission (Commission) started a claim and paid him beginning on February 14, 2021.[1]

[3] The Commission later conducted a review of the file. It decided that the Claimant was not entitled to EI benefits from February 14, 2021, because he did not have an interruption of earnings.[2] The Commission cancelled the claim and established an overpayment.

[4] The Tribunal's General Division dismissed the Claimant's appeal because it found that he didn't suffer an interruption of earnings prior to the start of the February 14, 2021, benefit period.

[5] The Claimant wants to appeal the General Division decision to the Appeal Division. He needs permission for the appeal to move forward.

[6] I am refusing permission to appeal because the Claimant's appeal has no reasonable chance of success.

Issue

[7] Is there an arguable case that the General Division made an error of law?

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[1] See GD3-18. The initial claim was made on February 16, 2021.
[2] Section 7(2)(a) of the *Employment Insurance Act* (EI Act) says that a person has to have an interruption of earnings to qualify for EI benefits. Section 14 of the *Employment Insurance Regulations* (EI Regulations) explains what an interruption of earnings means.

[8] Is there an arguable case that the General Division did not provide a fair process when it failed to explain temporary changes in the waiting period?

[9] Is there an arguable case that the General Division made a reviewable error in this case?

Analysis

The test for getting permission to appeal

[10] An appeal can only proceed if the Appeal Division gives permission to appeal.[3] I must be satisfied that the appeal has a reasonable chance of success.[4] This means that there must be some arguable ground upon which the appeal might succeed.[5]

[11] To meet this legal test, the Claimant must establish that the General Division may have made an error recognized by the law.[6] If the Claimant's arguments do not deal with one of these specific errors, the appeal has no reasonable chance of success and I must refuse permission to appeal.[7]

[12] In this case, the Claimant selected two grounds of appeal on his Application to the Appeal Division. He said the General Division made an error of fact and an error of law. He didn't specify which of his arguments were intended to relate to errors of fact or law, so I considered the statements and found that all of his grounds can be best described as alleged errors of law, and an allegation of an unfair process.

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[3] Section 58(1) of the *Department of Employment and Social Development Act* (DESD Act) says that I must refuse leave to appeal if I find the "appeal has no reasonable chance of success." This means that I must refuse permission for the appeal to move forward if I find there isn't an arguable case (*Fancy v Canada (Attorney General)*, 2010 FCA 63 at paragraphs 2 and 3). See also section 56(1) of the DESD Act.
[4] See section 58(2) of the DESD Act.
[5] See, for example, *Osaj v Canada (Attorney General)*, 2016 FC 115.
[6] The relevant errors, formally known as "grounds of appeal," are listed under section 58(1) of the DESD Act. These errors are also explained on the Notice of Appeal to the Appeal Division: See AD1C-4.
[7] This is the legal test described in section 58(2) of the DESD Act.

There is no arguable case that the General Division made an error of law

– The "waiting period" and an "interruption of earnings" are not the same

[13] The Claimant submits that the General Division made a mistake when it found that he didn't meet the criteria to establish that he experienced an interruption of earnings.[8] He says the General Division ignored the fact that the waiting period and the seven-day interruption in earnings refer to the same time.[9] He says that since the waiting period was waived for claims established from January 31, 2021, until September 25, 2021, the requirement of a seven-day interruption of earnings was also eliminated.

[14] The Claimant is alleging that the General Division made a legal mistake by not recognizing that the waiting period and an interruption of earnings are the same period.

[15] The General Division specifically addressed the Claimant's argument that the waiting period and an interruption of earnings are the same. It found that while the Federal Government may have waived the EI waiting period for a specific time during the pandemic, this was not relevant to the issue of whether there was an interruption of earnings. It said the waiting period occurs after the beginning of a benefit period, but an interruption of earnings occurs before a benefit period starts.[10] It also referred to the two separate sections of law that establish both concepts.[11]

[16] The *Employment Insurance Act* says that to qualify for benefits, a person must have an interruption of earnings.[12] The *Employment Insurance Regulations* say that an interruption of earnings occurs when three criteria are met:

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[8] See AD1C-9.
[9] While the Claimant referred to this as a factual mistake, it is better characterized as referring to a legal mistake.
[10] See General Division decision at paragraph 30.
[11] Section 7 of the EI Act explains how to qualify for benefits. Section 7(2)(a) lists the requirement of an interruption of earnings. The definition for an interruption of earnings is provided at section 14 of the EI Regulations. The waiting period is explained at section 13 of the EI Act.
[12] See section 7(2)(a) of the EI Act.

a) The claimant is laid off or terminated from their employment

b) The claimant doesn't work for seven consecutive days for the employer **and**

c) The claimant doesn't receive any earnings from the employment.

[17] There are other circumstances where an interruption of earnings may exist, but the General Division considered them and found they didn't apply.[13]

[18] The law says the waiting period is a one-week period where the Claimant isn't paid benefits, after establishing a claim.[14] It is similar to the concept of a deductible in other types of insurance. The Federal Government temporarily waived the waiting period to allow people who qualified for EI benefits to receive them immediately, without the requirement of serving one unpaid week.

[19] There is no arguable case that the General Division made an error of law when it found that the waiting period and an interruption of earnings are different concepts and relate to different time periods because the decision is supported by the law.

– **The waiting period is not an issue in this case**

[20] The Claimant also says the General Division made an error of law when it decided that the waiving of the waiting period during the COVID-19 pandemic was not relevant to whether the Claimant experienced an interruption of earnings.[15]

[21] The General Division explained the meaning of the term, "interruption of earnings," and why the waiting period was not an issue in the case.[16] It also explained that to qualify for EI regular benefits, a claimant must suffer an interruption of earnings and have enough hours of insurable employment.[17] The Claimant said that he didn't

[13] See General Division decision at paragraphs 16 and 17.
[14] See section 13 of the EI Act.
[15] See AD1C-10.
[16] See General Division decision at paragraphs 15, 16, and 30.
[17] See General Division decision at paragraph 13.

have a period of seven consecutive days without work or earnings in the qualifying period.[18] The General Division made its decision based on this evidence.

[22] The General Division found the waiting period is a one-week period at the beginning of a claim, when claimant cannot receive benefits. This was briefly waived during the COVID-19 pandemic. The requirement to have an interruption of earnings, with at least seven days without work done or earnings made, is a different concept than the waiting period. There was no waiver allowing that claims for EI benefits could be started without an interruption of earnings.

[23] There is no arguable case that the General Division made an error of law when it decided the waiver of the waiting period was not an issue under appeal. While the Claimant raised this issue in the context of supporting his contention that he didn't have to have an interruption of earnings, the General Division did not make a mistake when it found the law didn't support that interpretation.

– **The General Division did not ignore relevant evidence**

[24] The Claimant also submitted that the General Division made a mistake when it decided that there was "no evidence to support that the Commission ignored relevant factors, considered irrelevant factors, failed to act in good faith, or acted in a manner that was discriminatory."[19]

[25] The Claimant says that during the period when the waiting period was waived, the Parliamentary Budget Committee reported on the cost of the waiver. He said the cost of the policy across multiple types of EI benefits was calculated, and if the "7-day period of interruption of earning was not waived there would be no additional cost to the EI budget."[20] He referred to his submission to the General Division, saying the evidence was ignored.[21]

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[18] See General Division decision at paragraph 18. The qualifying period in this case is the 52 weeks prior to February 14, 2021.
[19] See AD1C-9.
[20] See AD1C-10.
[21] See AD1C-10. The document refers to the submissions contained in GD12-5.

[26] There is no arguable case that the General Division ignored relevant evidence. The General Division doesn't have to refer to every piece of evidence in a file; it is presumed to have considered everything.[22] The General Division acknowledged the argument about waiving the waiting period, but found it wasn't relevant because the issue was an interruption of earnings.[23] As such, the General Division wasn't required to specifically mention evidence related to the waiting period.

There is no arguable case that the General Division didn't provide a fair process when it failed to explain temporary changes in the waiting period

[27] The Claimant said that one of the reasons he appealed was because the General Division did not provide a legal definition of "waiting week waived" in the context of the COVID-19 pandemic, and didn't address "what the Minister of Employment intended by the Government of Canada's announcement."[24] In another document, he explained that he wanted to know, "what purpose did the Federal government's Cabinet Minister for Employment Carla Qualtrough mean or intend. That announcement was made January 29, 2021, effective from January 31, 2021, until September 25, 2021."[25]

[28] There is no arguable case that the General Division was procedurally unfair. The issue in this appeal was an interruption of earnings. Since the waiting period was not under appeal, the General Division didn't make a mistake by not explaining it.

[29] Further, the Claimant is referring to statements made by the Federal Government. The General Division could not have answered the Claimant's question about what the Government or a specific Minister meant. The Tribunal does not speak for the Government or any of its Ministers. It is clear from the dates provided by the Claimant that he is asking about statements made relative to the waiver of the waiting period. Again, this was not an issue in the appeal, so the General Division could not have made a mistake by not responding to this submission.

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[22] See *Simpson v Canada (Attorney General)*, 2012 FCA 82 at paragraph 10.
[23] See General Division decision at paragraph 30.
[24] See AD1-1.
[25] See AD1B-1.

There is no arguable case that the General Division made a reviewable error

[30] I reviewed the entire file to make sure the General Division didn't make a mistake. I considered the documents in the file, examined the decision under appeal, and satisfied myself that the General Division did not misinterpret or fail to properly consider any relevant evidence.[26]

[31] The Tribunal must follow the law, including the *Department of Employment and Social Development Act*. It provides rules for appeals to the Appeal Division. The Appeal Division does not provide an opportunity for the parties to re-argue their case. It determines whether the General Division made an error under the law.

[32] There is no arguable case that the General Division made a reviewable error in this case.

[33] The Claimant's representative asked the Tribunal how to appeal to the Court.[27] If the Claimant is not satisfied with this decision, he may bring an application for judicial review before the Federal Court of Canada.

Conclusion

[34] This appeal has no reasonable chance of success. For that reason, I'm refusing permission to appeal.

[35] This means that the appeal will not proceed.

Candace R. Salmon
Member, Appeal Division

[26] See *Karadeolian v Canada (Attorney General)*, 2016 FC 165 at paragraph 10.
[27] See AD1B-1.