



[TRANSLATION]

Citation: *MD v Canada Employment Insurance Commission*, 2023 SST 1260

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant:	M. D.
Respondent:	Canada Employment Insurance Commission
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Decision under appeal:	General Division decision dated July 11, 2023 (GE-23-797)
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Tribunal member:	Pierre Lafontaine
Decision date:	September 14, 2023
File number:	AD-23-718

Decision

[1] Permission to appeal is refused. The appeal will not proceed.

Overview

[2] The Applicant (Claimant) applied for Employment Insurance (EI) regular benefits. The Respondent (Commission) determined that the Claimant had 432 hours of work, when he needed 665 hours. It decided that the Claimant had not worked enough hours to qualify. After reconsideration, the Claimant appealed to the General Division.

[3] The General Division found that the Claimant had 432 hours of insurable employment in his qualifying period, when he needed 665 hours of insurable employment to qualify for regular benefits. It found that the Claimant had not shown that he had enough insurable hours to receive benefits.

[4] The Claimant seeks permission from the Appeal Division to appeal the General Division decision. He argues that his teaching job limits him to 50 days of work per school year at the risk of losing his pension payment. He is asking for an exemption or an annual exemption to get benefits because of the inconsistencies between federal and provincial laws.

[5] I have to decide whether there is an arguable case that the General Division made a reviewable error based on which the appeal has a reasonable chance of success.

[6] I am refusing permission to appeal because the Claimant has not raised a ground of appeal based on which the appeal has a reasonable chance of success.

Issue

[7] Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

Analysis

[8] Section 58(1) of the *Department of Employment and Social Development Act* specifies the only grounds of appeal of a General Division decision. These reviewable errors are the following:

1. The General Division hearing process was not fair in some way.
2. The General Division did not decide an issue it should have decided. Or, it decided something it did not have the power to decide.
3. The General Division based its decision on an important error of fact.
4. The General Division made an error of law when making its decision.

[9] An application for permission to appeal is a preliminary step to a hearing on the merits. It is an initial hurdle for the Claimant to meet, but it is lower than the one that must be met at the hearing of the appeal on the merits. At the permission to appeal stage, the Claimant does not have to prove his case; he must instead establish that the appeal has a reasonable chance of success. In other words, he must show that there is arguably a reviewable error based on which the appeal might succeed.

[10] I will give permission to appeal if I am satisfied that at least one of the Claimant's stated grounds of appeal gives the appeal a reasonable chance of success.

Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

[11] The Claimant argues that his teaching job limits him to 50 days of work per school year at the risk of losing his pension payment. He is asking for an exemption or an annual exemption to get benefits because of the inconsistencies between federal and provincial laws.

[12] The evidence shows that, during his qualifying period, from December 26, 2021, to December 24, 2022, the Claimant had only 432 hours of insurable employment, when he needed 665 hours to get regular benefits.

[13] As the General Division noted, if the Claimant wants to receive benefits, he has to work the hours required by the law like any other citizen. I see no contradiction between the provincial law limiting the number of teaching days to 50 per school year and the *Employment Insurance Act*. If the Claimant wants to qualify, he can still work in fields other than teaching to accumulate the hours needed to qualify for EI benefits.

[14] While I sympathize with the Claimant's situation, the law unfortunately does not allow any discrepancy and gives **no discretion** to the Tribunal to fix the issue with his December 23, 2022, claim for benefits, even on compassionate grounds.¹

[15] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for permission to appeal, I am of the view that the appeal has no reasonable chance of success. The Claimant has not raised any issue that could justify setting aside the decision under review.

Conclusion

[16] Permission to appeal is refused. The appeal will not proceed.

Pierre Lafontaine
Member, Appeal Division

¹ *Canada (Attorney General) v Lévesque*, 2001 FCA 304.