Citation: *MM v Canada Employment Insurance Commission*, 2023 SST 1033

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	M. M.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated April 18, 2023 (GE-22-3821)

Tribunal member:	Melanie Petrunia
Decision date:	August 1, 2023
File number:	AD-23-498

Decision

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

Overview

[2] The Applicant, M. M. (Claimant), became ill and took a leave of absence from her job as a secondary school teacher. She applied for employment insurance (EI) sickness benefits after using her sick leave and short-term illness benefits.

[3] The Respondent, the Canada Employment Insurance Commission (Commission) paid the Claimant sickness benefits until June 29, 2022. It decided that she could not be paid benefits during the non-teaching period from June 30, 2022 to September 5, 2022.

[4] The Claimant appealed this decision to the Tribunal's General Division. The General Division dismissed the appeal. It found that the Claimant is not entitled to sickness benefits for the non-teaching period because she did not meet any of the exceptions to this rule for teachers in the *Employment Insurance Regulations* (Regulations).

[5] The Claimant is now asking to appeal the General Division decision to the Tribunal's Appeal Division. She argues that the General Division made an error of law in its decision. However, she needs permission for her appeal to move forward.

[6] I have to decide whether there is some reviewable error of the General Division on which the appeal might succeed. I am refusing leave to appeal because the Claimant's appeal has no reasonable chance of success.

Issues

[7] The issues are:

a) Is there an arguable case that the General Division made an error of law by not following relevant case law?

b) Does the Claimant raise any other errors of the General Division that have a reasonable chance of success?

I am not giving the Claimant permission to appeal

[8] The legal test that the Claimant needs to meet on an application for leave to appeal is a low one: Is there any arguable ground on which the appeal might succeed?[1]

[9] To decide this question, I focused on whether the General Division could have made one or more of the relevant errors (or grounds of appeal) listed in the *Department of Employment and Social Development Act* (DESD Act).[2]

[10] An appeal is not a rehearing of the original claim. Instead, I must decide whether the General Division:

a) failed to provide a fair process;

b) failed to decide an issue that it should have, or decided an issue that it should not have;

c) based its decision on an important factual error;[3] or

d) made an error in law.[4]

[11] Before the Claimant can move on to the next stage of the appeal, I have to be satisfied that there is a reasonable chance of success based on one or more of these grounds of appeal. A reasonable chance of success means that the Claimant could

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[1] This legal test is described in cases like *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12 and *Ingram v Canada (Attorney General)*, 2017 FC 259 at para 16.
[2] DESD Act, s 58(2).
[3] The language of section 58(1)(c) actually says that the General Division will have erred if it bases its decision on a finding of fact that it makes in a perverse or capricious manner or without regard for the material before it. The Federal Court has defined perverse as “willfully going contrary to the evidence” and defined capricious as “marked or guided by caprice; given to changes of interest or attitude according to whim or fancies; not guided by steady judgment or intent” *Rahi v Canada (Minister of Citizenship and Immigration)* 2012 FC 319.
[4] This paraphrases the grounds of appeal.

argue her case and possibly win. I should also be aware of other possible grounds of appeal not precisely identified by the Claimant.[5]

No arguable case that the General Division erred in law

[12] Under the EI Regulations, a teacher employed in teaching during the qualifying period, is not entitled to receive EI benefits for weeks of unemployment during a non-teaching period.[6] The summer months when school is not ordinarily in session is considered a non-teaching period.

[13] There are three exceptions to this rule in the Regulations. Only one of the exceptions is at issue in this application: whether the Claimant's contract of employment for teaching had terminated.[7]

[14] The General Division had to determine whether the Claimant was employed as a teacher. Then, it had to decide whether any of the exceptions in the Regulations applied to the Claimant.

[15] The General Division found that the Claimant was employed as a teacher, as agreed to by the parties.[8] There was no argument that she was employed on a casual or substitute basis, or that she had worked in any jobs other than teaching during her qualifying period.[9] The General Division's analysis focused on whether her teaching contract had terminated.

[16] In deciding whether the Claimant's contract had terminated, the General Division noted that it had to determine whether there had been a veritable break in the continuity of her employment.[10] It set out the key factors to consider as established by the Federal

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[5] *Karadeolian v Canada (Attorney General)*, 2016 FC 615; J*oseph v Canada (Attorney General)*, 2017 FC 391.
[6] See section 33(2) of the *Employment Insurance Regulations*.
[7] The other exceptions apply when a claimant's employment in teaching was on a casual or substitute basis and when a claimant qualifies to receive benefits because of employment in a job other than teaching.
[8] General Division decision at para 17.
[9] General Division decision at paras 43 and 46.
[10] General Division decision at para 21 referencing *Stone v. Canada (Attorney General)*, 2006 FCA 27.

Court of Appeal.[11] The General Division considered each of these factors in light of the evidence before it and found that the Claimant's contract had not terminated.[12]

[17] The Claimant argues that the General Division made an error of law. She relies on a case from the Federal Court of Appeal that she says is factually similar to her situation. She says that the claimant in that case was entitled to benefits because there was found to have been a break in the continuity of employment.[13]

[18] I find that there is no arguable case the General Division made an error of law. The Claimant relies on the case of *Canada (Attorney General) v. Taylor*.[14] She says that the claimant in that case appealed and was successful. She cites certain passages from the decision that support her position.[15] The Claimant also references passages from *Stone v. Canada (Attorney General)*.[16]

[19] Contrary to the Claimant's position, the Federal Court of Appeal in *Taylor* found that the contract of employment had not terminated for the claimant in that case, and she was not entitled to be paid benefits during the summer non-teaching period. The passages that the Claimant relies on in support of her position are from the decision of the umpire, which was set aside by the Court.

[20] The Claimant did not explain why she finds the *Stone* decision supportive of her argument that the General Division made an error of law. However, I note that the General Division considered and applied the principles from *Stone* and *Taylor* in its decision.[17]

[11] General Division decision at para 22.
[12] General Division decision at paras 23 to 31.
[13] AD1-4
[14] *Canada (Attorney General) v. Taylor*, 1991CanLII 8205.
[15] AD1-5
[16] AD1-6 and AD1-7
[17] General Division decision at paras 21, 22 and 50.

[21] In her application for leave to appeal, the Claimant also refers to the factors that were considered by the General Division. She restates a number of facts that she relied on at the hearing before the General Division.[18] Specifically, she states:

- that she was not paid during the period that she has been disentitled;
- she was not promptly reinstated when she provided a medical note;
- she had an unknown return date on her ROE;
- the school board hired a Long Term Occasional (LTO) teacher in September 2022; and,
- she was responsible for her own insurance payments and pension contributions.

[22] These facts were considered by the General Division.[19] The Claimant does not argue that the General Division based its decision on any factual errors.

[23] The General Division took the Claimant's arguments and testimony into consideration. It stated and applied the proper legal test to the Claimant's circumstances and determined that there was no veritable break in the continuity of the Claimant's employment.

[24] The General Division has the authority to weigh the evidence before it and apply these facts to settled principles. I cannot reweigh the evidence in a different way to come to a different conclusion.[20]

[25] Aside from the Claimant's arguments, I have also considered the other grounds of appeal. The Claimant has not pointed to any procedural unfairness on the part of the General Division, and I see no evidence of procedural unfairness. There is no arguable

[18] AD1-7
[19] General Division decision at paras 29 and 38 to 42.
[20] See *Rouleau v Canada (Attorney General)*, 2017 FC 534.

case that the General Division based its decision on an important mistake about the facts or made an error of jurisdiction.

[26] The Claimant has not identified any errors of the General Division upon which the appeal might succeed. As a result, I am refusing leave to appeal.

Conclusion

[27] Permission to appeal is refused. This means that the appeal will not proceed.

Melanie Petrunia
Member, Appeal Division