



Citation: *TB v Canada Employment Insurance Commission*, 2023 SST 973

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

# **Leave to Appeal Decision**

**Applicant:** T. B.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated February 13, 2023  
(GE-22-3491)

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**Tribunal member:** Candace R. Salmon

**Decision date:** July 25, 2023

**File number:** AD-23-158

## **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] T. B. is the Claimant. He applied for regular Employment Insurance (EI) benefits on September 11, 2021. The Canada Employment Insurance Commission (Commission) established the claim as of September 5, 2021, and started paying benefits.

[3] The Commission established the Claimant's benefit period from September 5, 2021, until September 3, 2022. The Commission stopped paying the Claimant EI benefits after September 3, 2022, because the benefit period ended.

[4] The Claimant believes he is entitled to another week of EI benefits. The Tribunal's General Division dismissed the appeal because it found that the benefit period ended on September 3, 2022, and the Claimant wasn't entitled to benefits after that date.

[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.

## **Preliminary matters**

[7] The Claimant applied to the Appeal Division, requesting leave to appeal the General Division's February 13, 2023, decision. In his reasons for requesting

permission to appeal, the Claimant identified numerous alleged errors in the Commission's submissions.<sup>1</sup>

[8] The Claimant did not identify any alleged mistakes in the General Division's decision.

[9] Since the Claimant appeared to misunderstand what he was required to provide to the Appeal Division to support his request for leave to appeal, I scheduled a case conference to clarify next steps. The case conference was held on June 20, 2023, and was attended by the Claimant and a Commission representative.

[10] At the conference, the Claimant explained that he didn't receive the General Division decision and didn't think any reasons were provided for the denial of his request for an additional week of EI benefits. He received the Commission's submissions, so he appealed based on what the Commission had argued.

[11] I suggested allowing the Claimant additional time to submit reasons for requesting leave to appeal. Both the Claimant and the Commission agreed with this proposal and the submission deadline of July 4, 2023. After the case conference, the Tribunal sent a letter to both parties summarizing the discussion and attached a copy of the General Division decision.<sup>2</sup>

[12] The parties agreed that I would give the Claimant two weeks to provide his reasons for appealing the General Division's decision. If he needed more time, I told him he could ask for it, but if he didn't reply by July 4, 2023, I would decide based on the contents of the file.

[13] The Claimant did not reply. I waited an additional two weeks, giving the Claimant one month from the date of the case conference. He has not contacted the Tribunal to

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<sup>1</sup> See pages AD1-3 to AD1-8. In this document, the Claimant refers to the arguments of a specific Commission officer, who wrote the submissions marked as GD4 and GD7.

<sup>2</sup> See case conference summary letter dated June 20, 2023, marked as AD2.

provide further information or ask for more time. Therefore, I will proceed with the decision based on the contents of the file.

## Issue

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

## Analysis

### The test for getting permission to appeal

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

[16] To meet this legal test, the Claimant must establish that the General Division may have made an error recognized by the law.<sup>6</sup> 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.<sup>7</sup>

### The Claimant did not identify any errors in the General Division decision

[17] On the application to the Appeal Division, the Claimant said the General Division made an error or fact but did not support that statement with any submissions relating to the General Division's decision.<sup>8</sup>

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<sup>3</sup> The *Department of Employment and Social Development Act* (DESD Act) at section 58(1) 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.

<sup>4</sup> See section 58(2) of the DESD Act.

<sup>5</sup> See, for example, *Osaj v Canada (Attorney General)*, 2016 FC 115.

<sup>6</sup> 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 page AD1-3.

<sup>7</sup> This is the legal test described in section 58(2) of the DESD Act.

<sup>8</sup> See section 4 of page AD1-3.

[18] Despite the absence of submissions in relation to the General Division's decision, I considered the Claimant's reasons for appealing to ensure the General Division didn't make a mistake.

[19] The Claimant said he received termination pay in April 2022, instead of September 2021. The General Division appears to have accepted this.<sup>9</sup>

[20] The Claimant also said that his last payment from X was made on September 24, 2021, instead of September 10, 2021. The General Division also addressed this point, and explained why the benefit period couldn't be extended.<sup>10</sup>

[21] Finally, the Claimant says the Commission told him that his claim would end on September 24, 2022, and then changed the date to September 3, 2022. The General Division also addressed this in its decision, finding that it didn't matter what the Commission may have told the Claimant because he was not entitled to receive any further EI benefits.<sup>11</sup>

[22] The General Division addressed the Claimant's issues, and its findings are supported by the evidence in the record. The Claimant hasn't shown that the appeal has a reasonable chance of success, so it cannot move forward.

### **There are no other reasons for giving the Claimant permission to appeal**

[23] Even though the Claimant didn't identify any issues in the General Division decision, I still must consider whether the General Division may have made any other mistakes that the Claimant didn't identify.

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<sup>9</sup> See General Division decision at paragraph 23.

<sup>10</sup> See General Division decision at paragraphs 13 and 28 to 31.

<sup>11</sup> See General Division decision at paragraphs 33 to 37.

**The General Division didn't misinterpret or ignore relevant evidence**

[24] I reviewed 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.<sup>12</sup>

[25] 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.

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

**Conclusion**

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

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

Candace R. Salmon  
Member, Appeal Division

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<sup>12</sup> See *Karadeolian v Canada (Attorney General)*, 2016 FC 165 at paragraph 10.