Citation: *SM v Canada Employment Insurance Commission*, 2023 SST 1013

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

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

Decision under appeal:	General Division decision dated April 17, 2023 (GE-22-4232)

Tribunal member:	Melanie Petrunia
Decision date:	July 31, 2023
File number:	AD-23-542

Decision

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

Overview

[2] The Applicant, S. M. (Claimant), applied for employment insurance (EI) regular benefits on September 23, 2022. He had accumulated 432 insurable hours and believed that he required 420 hours to qualify for benefits. Temporary measures introduced in response to the Covid-19 pandemic allowed for claimants to qualify for benefits were fewer hours of insurable employment.

[3] The Respondent, the Canada Employment Insurance Commission (Commission), decided that the Claimant did not qualify for benefits. He did not have enough insurable hours to establish a benefit period under these temporary measures. Without the temporary measure, he required 700 insurable hours.

[4] The Claimant appealed the Commission's decision to the Tribunal's General Division. The General Division dismissed the appeal. It found that the Commission properly determined that the Claimant did not have enough insurable hours to establish a benefit period.

[5] The Claimant is now requesting leave, or permission, to appeal the General Division's decision to the Appeal Division. He argues that the General Division made an important factual error and failed to follow procedural fairness.

[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 didn't follow procedural fairness?

b) Is there an arguable case that the General Division based its decision on an important error of fact?

c) Does the Claimant raise any other reviewable error of the General Division upon which the appeal might succeed?

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

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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

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

There is no arguable case that the General Division erred

[12] In his request for leave to appeal, the Claimant argues that there is an obvious contradiction between the General Division decision and a statement on the Government of Canada website.[6] Specifically, the General Division found that the Claimant needed 700 hours of insurable employment between September 26, 2021 and September 24, 2022 to establish a benefit period commencing September 25, 2022, but only had 432 hours.[7]

[13] The Claimant says that this finding is contradicted by the information on the website which states that a claimant required 420 hours of insurable employment before September 24, 2022 to qualify for benefits. The General Division agreed that the website provided this information.[8]

[14] The Claimant submits that his record of employment clearly showed that he had accumulated 432 hours by September 23, 2022, which is when he applied for benefits. The Claimant argues that the General Division decision suggests that a government website cannot be trusted, which is unreasonable.[9]

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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.
[5] *Karadeolian v Canada (Attorney General)*, 2016 FC 615; J*oseph v Canada (Attorney General)*, 2017 FC 391.
[6] AD1-11
[7] General Division decision at para 2.
[8] General Division decision at para 8.
[9] AD1-11

[15] I find that these arguments do not amount to a potential error of fact or breach of procedural fairness. The General Division acknowledged the contradiction between the legislation and the information available to the Claimant on the website.[10] It also accepted, as fact, that the Claimant's record of employment showed 432 hours by September 23, 2022.[11]

[16] The Claimant also argues that there is an issue with the "date stamp" of his application for benefits. He says that he followed all available information and submitted his application on September 23, 2022, before the end of the temporary measures. His application was not processed until the following Monday, September 26, 2022. The Claimant says that there was a breach of fundamental fairness in denying him benefits considering he met all requirements according to available information.[12]

[17] I am sympathetic to the Claimant's frustrations. However, the apparent unfairness of the application of the legislation in this case is not the same as a breach of procedural fairness by the General Division.

[18] In this case, the General Division gave the Claimant an opportunity to present his arguments and it addressed his submissions in its decision. There is no arguable case that the General Division breached procedural fairness by applying the law even though it may have been contradicted by the information on the Service Canada website.

[19] The General Division properly applied the law to the Claimant's circumstances when it found that he did not have sufficient insurable hours to establish a benefit period.

[20] The General Division considered whether the Claimant's benefit period could commence the previous Sunday when the temporary measure would apply. However, the Claimant would not have accumulated the required 420 insurable hours to establish

[10] General Division decision at paras 8 to 10.
[11] General Division decision at para 16.
[12] AD1-11 to AD1-13

a benefit period commencing September 18, 2022.[13] This is because the hours he accumulated after that date would not count.

[21] The Commission considered whether the Claimant could have established a benefit period commencing September 25, 2022, despite the fact that the Claimant applied on September 23, 2022. However, because this benefit period commenced after the legislation changed, the Claimant required 700 hours of insurable employment.

[22] The General Division relied on decisions of the Appeal Division which considered another temporary measure that allowed for claimants to establish a claim with a one-time credit of 300 hours. The Appeal Division in that case recognized that contradictory or confusing wording on a website does not change the meaning of the law.[14]

[23] The Claimant is restating the arguments that he made before the General Division. He believes that he should be able to rely on the information on the Service Canada website. According to that information, the Claimant argues he should be entitled to benefits. Unfortunately, as found by the General Division, the Claimant required 700 hours of insurable employment to establish a benefit period commencing September 25, 2022.

[24] There is no arguable case that the General Division failed to follow procedural fairness or based its decision on an important mistake about the facts. Aside from the Claimant's arguments, I have also considered other grounds of appeal. The Claimant has not pointed to any errors of jurisdiction, and I have not identified any such errors. There is no arguable case that the General Division made any errors of law in its decision.

[25] 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.

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[13] General Division decision at para 14.
[14] See *Canada Employment Insurance Commission v. P.G. et al*., 2022 SST 388

Conclusion

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

Melanie Petrunia
Member, Appeal Division