



Citation: *CE v Canada Employment Insurance Commission*, 2023 SST 1100

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: C. E.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated June 12, 2023
(GE-22-3975)

Tribunal member: Solange Losier

Decision date: August 15, 2023

File number: AD-23-626

Decision

[1] Leave (permission) to appeal is refused. This means that the appeal will not proceed.

Overview

[2] C. E. is the Claimant in this case. He applied for Employment Insurance (EI) benefits on August 26, 2022.¹

[3] The Canada Employment Insurance Commission (Commission) decided that a benefit period could not be established because he didn't have enough hours to qualify for EI benefits.²

[4] Previously in 2019, the Commission issued a violation classified as "serious" to the Claimant for making one false representation and not declaring earnings.³ The result is that the Claimant would need more insurable hours to qualify for EI benefits when he applied for EI benefits next time (there are some limitations).⁴

[5] The General Division decided that the Claimant had not worked enough hours in his qualifying period.⁵ It said that he needed 630 hours to qualify for EI benefits because of the previous violation issued to him.⁶

[6] The Claimant is now asking for permission to appeal the General Division decision to the Appeal Division.⁷ He needs permission for the appeal to move forward.

[7] I am denying the Claimant's request for permission to appeal because it has no reasonable chance of success.⁸

¹ See application for EI benefits at pages GD3-3 to GD3-16.

² See initial decision at pages GD3-29 to GD3-30 and reconsideration decision at page GD3-36.

³ See Commission's previous initial decision (dated May 3, 2019) at pages GD3-26 to GD3-28.

⁴ See sections 7.1(1) and 7.1(3) of the EI Act.

⁵ See General Division decision at pages AD1A-1 to AD1A-6.

⁶ See paragraphs 23, 24 and 25 of the General Division decision.

⁷ See pages AD1-1 to AD1-8.

⁸ See section 58(2) of the *Department of Employment and Social Development Act* (DESD Act).

Preliminary matters

[8] The Claimant applied to the Appeal Division on June 19, 2023.⁹ He wrote that he wanted a reconsideration of the decision made to deny his claim for EI benefits for the periods from May 3, 2019 and December 16, 2019.¹⁰ He also provided some explanation about his address, hours and payment for extra hours for the period in 2019. He notes that it is taking a toll on him physically.

[9] The Claimant didn't use the correct forms to submit his request to the Appeal Division.¹¹ So, the Tribunal sent him a letter on June 23, 2023 asking him for more information. The letter asked him for reasons for making his appeal and provided some examples that the Appeal Division could consider.¹² The deadline to reply to the above letter and provide reasons for his appeal was July 7, 2023.

[10] The Tribunal also contacted the Claimant by telephone on June 27, 2023 and spoke to him about his appeal to the Appeal Division.

[11] As of the date of this decision, the Tribunal has not received a reply to the letter or any communication from the Claimant.

Issue

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

Analysis

The test for getting permission to appeal

[13] An appeal can proceed only if the Appeal Division gives permission to appeal.¹³

⁹ See pages AD1-1 to AD1-8.

¹⁰ See page AD1-4. The Claimant was referring to two initial decisions made by the Commission on May 3, 2019 and December 16, 2019 which can be found at pages GD3-26 to GD3-28 and GD7A-1 to GD7A-2.

¹¹ The Claimant used the forms when someone is appealing to the General Division of the Tribunal.

¹² The examples listed included the "grounds of appeal" under section 58(1) of the DESD Act.

¹³ See section 56(1) of the DESD Act.

[14] I must be satisfied that the appeal has a reasonable chance of success.¹⁴ This means that there must be some arguable ground upon which the appeal might succeed.¹⁵

[15] I can only consider certain types of errors. I have to focus on whether the General Division could have made one or more of the relevant errors (this is called the “grounds of appeal”).¹⁶

[16] The possible grounds of appeal to the Appeal Division are that the General Division did one of the following:¹⁷

- proceeded in a way that was unfair
- acted beyond its powers or refused to exercise those powers
- made an error in law
- based its decision on an important error of fact

[17] For the appeal to proceed, I have to find that there is a reasonable chance of success on one of the grounds of appeal.¹⁸

There are no reasons to give the Claimant permission to appeal

– The Claimant is asking for a reconsideration of previous Commission decisions

[18] In the Claimant’s request to the Appeal Division, he explains that he is asking for a **reconsideration** to deny his claim for EI benefits on May 3, 2019 and December 16, 2019.¹⁹ As noted above, he provides some explanation about his address, hours and

¹⁴ See section 58(2) of the DESD Act.

¹⁵ See *Osaj v Canada (Attorney General)*, 2016 FC 115.

¹⁶ See section 58(1) of the DESD Act.

¹⁷ See section 58(1) of the DESD Act.

¹⁸ See section 58(2) of the DESD Act.

¹⁹ See pages AD1-4 to AD1-5.

payment for extra hours from that period. He also wrote that it is taking a toll on him physically.

[19] First, the Claimant has not responded to the Tribunal's letter and provided any reasons or pointed to any specific errors made by the General Division.

[20] Second, it looks like the Claimant applied to the Appeal Division asking for a reconsideration of the Commission's initial decisions dated on May 3, 2019 and December 16, 2019. I say this because he specifically asks for a reconsideration of those decisions and provides an explanation for what happened at that time.²⁰

[21] A reviewable error is one of the errors I wrote about in paragraph 15 above. My authority is limited to determining whether the General Division made a reviewable error in its decision.²¹ Given that, I will review what the General Division decided in this case to see if there are any reviewable errors.²²

– **The Commission's reconsideration decision dated October 19, 2022**

[22] The Commission decided that the Claimant didn't have enough hours to qualify for EI regular benefits in response to the application for EI benefits that he made on August 26, 2022.²³ It said he needed 630 hours of insurable employment and referenced the previous serious violation.

[23] The Claimant asked the Commission to reconsider that initial decision. He wrote "*the one filed on August 26, 2022*" in his form.²⁴

[24] The Commission then made a "reconsideration decision" on October 19, 2022 maintaining their initial decision.²⁵ It said that a benefit period could not be established.

²⁰ See page AD1-4 and pages GD3-26 to GD3-28 and GD7A-1 to GD7A-2.

²¹ See section 58(1) of the DESD Act and *Marcia v Canada (Attorney General)*, 2016 FC 1367.

²² See section 58(1) of the DESD Act.

²³ See initial decision dated August 29, 2022 at pages GD3-29 to GD3-30.

²⁴ See request for reconsideration made on September 14, 2022 at pages GD3-32 to GD3-33.

²⁵ See reconsideration decision dated October 19, 2022 at page GD3-36.

[25] This is the reconsideration decision that the Claimant appealed to the General Division of the Social Security Tribunal.²⁶

– **The General Division could only consider the October 19, 2022 reconsideration decision**

[26] The General Division decided that it could not consider the May 3, 2019 and December 16, 2019 decisions because the Claimant had not yet asked the Commission to reconsider them.²⁷

[27] However, in paragraph 14 of the General Division decision, it said that “*nothing in my decision prevents that Appellant from asking the Commission to reconsider the May 3, 2019 and December 16, 2019 decisions*”.

[28] The hearing recording indicates that the General Division member and Claimant discussed the steps for requesting a reconsideration of May 3, 2019 and December 16, 2019 initial decisions made by the Commission.²⁸

[29] The General Division’s authority to make a decision comes from a reconsideration decision that is appealed to the Tribunal.²⁹ Put another way, in order for the General Division to make a decision, there has to be a reconsideration decision made by the Commission and it must be appealed to the Tribunal.

[30] In this case, the General Division’s authority was limited to deciding whether the Claimant could establish a benefit period based on his August 26, 2022 application for EI regular benefits. Because the reconsideration decision dated October 19, 2022, was the one he appealed to the Tribunal.³⁰

[31] So, if the Claimant still wants to ask the Commission to reconsider the May 3, 2019 and December 16, 2019 initial decisions, **he must make his request for a reconsideration directly to the Commission (also known as Service Canada).**

²⁶ See appeal to the General Division at pages GD2-1 to GD2-13 and section 113 of the EI Act.

²⁷ See paragraphs 11 and 12 of the General Division decision.

²⁸ See hearing recording at 20:10.

²⁹ See sections 112 and 113 of the EI Act.

³⁰ See page GD3-36 and appeal to General Division at pages GD2-1 to GD2-13.

There is a special form that he can complete called a “*Request for Reconsideration of an Employment Insurance (EI) decision*”. An example of that form is in the file at pages GD3-32 to GD3-33.

– **The General Division decided that the Claimant did not have enough hours**

[32] The General Division had to decide whether the Claimant had worked enough hours to qualify for EI benefits based on the application he made for EI regular benefits on August 26, 2022.³¹

[33] The General Division outlined the applicable law.³² It also pointed out that the Claimant had been issued a serious violation on May 3, 2019.³³ It said that the Claimant needed 630 hours of work to qualify for EI benefits because of the serious violation.³⁴

[34] The General Division said that the Claimant had not proven he had enough hours to qualify for EI benefits because he needed 630 hours, but had worked only 503 hours.³⁵ This was undisputed as the Claimant agreed that he had only worked 503 hours during the relevant period.³⁶

– **There is no arguable case that the General Division made any reviewable errors**

[35] There is no arguable case that the General Division made any reviewable errors.³⁷ There is no reasonable chance of success.

[36] I reviewed the file, listened to the audio recording of the General Division hearing, and examined the General Division decision.³⁸ I did not find any relevant evidence that the General Division might have ignored or misinterpreted. As well, the

³¹ See sections 7(1) and 7.1(1) of the EI Act.

³² See paragraphs 18, 19, 20, 21, 23, 24 and 26 of the General Division decision.

³³ See paragraph 22 of the General Division decision.

³⁴ See paragraphs 23, 24 and 25 of the General Division decision.

³⁵ See paragraphs 32, 33 and 34 of the General Division decision.

³⁶ See paragraph 32 of the General Division and hearing recording at 37:44 to 38:21.

³⁷ See section 58(1) of the DESD Act.

³⁸ The Federal Court has said that I should do this in decisions like *Griffin v Canada (Attorney General)*, 2016 FC 874 and *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

General Division stated and applied the relevant sections in law. It only decided what it had the power to decide.

Conclusion

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

Solange Losier
Member, Appeal Division