



Citation: *RG v Canada Employment Insurance Commission*, 2023 SST 1079

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: R. G.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated May 31, 2023
(GE-23-43)

Tribunal member: Stephen Bergen

Decision date: **August 11, 2023**

File number: AD-23-628

Decision

[1] I am refusing leave (permission) to appeal. The appeal will not proceed.

Overview

[2] R. G. is the Applicant. He made a claim for Employment Insurance (EI) benefits so I will call him the Claimant. The Respondent, the Canada Employment Insurance Commission (Commission), denied the claim because the Claimant did not have enough hours of insurable employment to qualify. When the Claimant asked the Commission to reconsider, it would not change its decision.

[3] The Claimant appealed to the General Division of the Social Security Tribunal, which dismissed his appeal. He is now asking the Appeal Division for leave to appeal.

[4] I am refusing leave to appeal. The Claimant has not identified an arguable case that the General Division made an error of jurisdiction.

Issues

[5] Is there an arguable case that the General Division made an error of jurisdiction when it refused to make an exception to the regular insurable hour requirement?

I am not giving the Claimant permission to appeal

General Principles

[6] For the Claimant's application for leave to appeal to succeed, his reasons for appealing would have to fit within the "grounds of appeal." The grounds of appeal identify the kinds of errors that I can consider.

[7] I may consider only the following errors:

- a) The General Division hearing process was not fair in some way.
- b) The General Division did not decide an issue that it should have decided. Or, it decided something it did not have the power to decide (error of jurisdiction).

- c) The General Division based its decision on an important error of fact.
- d) The General Division made an error of law when making its decision.¹

[8] To grant this application for leave and permit the appeal process to move forward, I must find that there is a reasonable chance of success on one or more grounds of appeal. Other court decisions have equated a reasonable chance of success to an “arguable case.”²

Error of Jurisdiction

[9] The General Division dismissed the Claimant’s appeal because he did not have sufficient hours of insurable employment (hours)³ in his qualifying period.

[10] He does not dispute that his qualifying period is the period between November 7, 2021, and November 5, 2022, and he agrees that he resided in the economic region of Toronto. The General Division accepted these facts. It therefore accepted that the regional rate of unemployment was 6.1%⁴ and that the Claimant would require 665 hours to qualify for regular EI benefits.⁵

[11] The Claimant also acknowledges that he had only 513 hours in that period. However, he feels that this should be enough. He argues that that he would only have needed 420 hours to qualify for much of the time he was working. He feels that it is unfair that the requirement changed shortly before he applied for benefits.

[12] The Claimant argues that the General Division should have considered whether to make an exception to the insurable hour requirement in his case. He characterizes this as an error of jurisdiction.

¹ This is a plain language version of the grounds of appeal. The full text is in section 58(1) of the *Department of Employment and Social Development Act* (DESDA).

² See *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; and *Ingram v Canada (Attorney General)*, 2017 FC 259.

³ “hours of insurable employment” is the term used in section 7(2) of the *Employment Insurance Act* (EI Act). I will refer to them as “hours.”

⁴ See GD3-19.

⁵ See the chart of required hours found in section 7(2) of the (EI Act).

[13] There is no arguable case that the General Division made an error of jurisdiction.

[14] The minimum number of hours was temporarily reduced to 420 hours because of the hardships associated with Covid. As the General Division noted, that change was in place for new applications made between September 26, 2021, and September 24, 2022. The Claimant applied for benefits on November 9, 2022, so his application was subject to the usual insurable hour minimum.

[15] The General Division is a tribunal created by the *Department of Employment and Social Development Act* (DESDA).⁶ That means that it has only those powers granted it by the DESDA. Under the DESDA, the General Division has the power to “decide any question of law or fact”. The question of how many hours is required for a claimant to qualify is a question of law.

[16] As a matter of law, the General Division must apply the EI Act. The EI Act sets out the criteria required to qualify for benefits, including the number of hours. The DESDA does not authorize the General Division to ignore that criteria in the interests of “equity” (fairness).⁷ Therefore, the General Division could not confirm an entitlement to benefits that conflicted with the legislative criteria, even if it had accepted that this would be a fairer result. If it had done so, it would have made an error by going beyond its jurisdiction.

[17] There is no arguable case that the General Division made an error of jurisdiction by not considering whether to make an exception for the Claimant’s circumstances. It had no authority to relieve the Claimant from the legislative requirement that he have 665 hours.

[18] The Claimant’s appeal has no reasonable chance of success.

⁶ The General Division is created by section 44(1) of the DESDA.

⁷ See the decision in *Alberta v McGready*, 2015 ABCA 54, leave to the Supreme Court of Canada refused.

Conclusion

[19] I am refusing leave to appeal. This means that the appeal will not proceed.

Stephen Bergen
Member, Appeal Division