



Citation: *EG v Canada Employment Insurance Commission*, 2023 SST 1051

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: E. G.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated May 10, 2023
(GE-23-623)

Tribunal member: Candace R. Salmon

Decision date: August 8, 2023

File number: AD-23-600

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] The Claimant is E. G.. He applied for Employment Insurance (EI) regular benefits in December 2022. The Canada Employment Insurance Commission (Commission) decided he couldn't establish a claim for benefits because he didn't have enough hours of insurable employment in his qualifying period.

[3] The Tribunal's General Division dismissed the appeal because it also found the Claimant didn't have enough hours of insurable employment to qualify for benefits. It said the qualifying period ran from May 15, 2022, until December 3, 2022, and the Claimant only accumulated 125 hours of insurable employment but needed 700 hours to qualify.¹

[4] The Claimant wants to appeal the General Division decision to the Appeal Division. He needs permission for the appeal to move forward.

[5] I am refusing permission to appeal because the appeal has no reasonable chance of success.

Issue

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

¹ See General Division decision at paragraph 33.

Analysis

The test for getting permission to appeal

[7] An appeal can only proceed if the Appeal Division gives permission to appeal.² I must be satisfied that the appeal has a reasonable chance of success.³ This means that there must be some arguable ground upon which the appeal might succeed.⁴

[8] To meet this legal test, the Claimant must establish that the General Division may have made an error recognized by the law.⁵ 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.⁶

There is no arguable case that the General Division made an error of law

[9] On the application to the Appeal Division, the Claimant said the General Division made an error of law. He said that the *Employment Insurance Act* (EI Act) required him to have 700 hours of insurable employment to receive EI benefits. He said he had 924 hours, so should be eligible.

[10] The General Division addressed this argument in its decision. It said that the Claimant needed 700 hours to qualify for benefits, but only accumulated 125 hours.⁷ It also said that while the Claimant thought he had more hours, some of those were used to establish a previous claim and cannot be used a second time.⁸

² 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.

³ See section 58(2) of the DESD Act.

⁴ See, for example, *Osaj v Canada (Attorney General)*, 2016 FC 115.

⁵ 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.

⁶ This is the legal test described in section 58(2) of the DESD Act.

⁷ See General Division decision at paragraphs 19 and 33.

⁸ See General Division decision at paragraphs 29 and 30.

[11] The Claimant said that his benefit period started in May 2022. The General Division agreed that he had a claim that began on May 15, 2022.⁹ This is not the claim under appeal.

[12] The General Division found that the Claimant's earlier benefit period ran from May 15, 2022, until September 24, 2022.¹⁰ It also accepted as fact that the Claimant received a full entitlement of 17 weeks of EI benefits by September 24, 2022.¹¹

[13] Given these findings, it said that the Claimant had to start a new benefit period when he applied for EI in December 2022. This benefit period was based on a qualifying period from May 15, 2022, to December 3, 2022. Since the Claimant only worked 125 hours in the period from May 15, 2022, until December 3, 2022, the General Division found that he wasn't entitled to EI benefits.¹²

[14] The General Division noted that the Claimant said EI benefits usually last "about 45 weeks."¹³ It explained that the number of weeks of benefits in a benefit period depends on multiple factors and isn't necessarily the same every time someone makes a claim.¹⁴

There's no arguable case that the General Division violated procedural fairness

[15] On the application to the Appeal Division, the Claimant also said that the General Division didn't provide a fair process. Generally speaking, procedural fairness is concerned with the rights of the parties to know the case they have to meet, with having a fair and reasonable opportunity to present their case, and with receiving a decision that is free from bias or the reasonable apprehension of bias.

⁹ The Claimant said his benefit period started on May 12, 2022. The General Division found it started on May 15, 2022. See General Division decision at paragraph 25.

¹⁰ See General Division decision at paragraph 29.

¹¹ See General Division decision at paragraphs 28 and 29.

¹² See General Division decision at paragraphs 29 and 30.

¹³ See General Division decision at paragraph 26 and GD7-1.

¹⁴ See General Division decision at paragraph 26.

[16] The Claimant says that the General Division decision is unfair. He also says that the decision should, “not be based on gender or race, and there is no valid reason to not grant me my Employment Insurance benefits.”¹⁵

[17] The Claimant says the General Division decision should not be based on gender or race, but there is no evidence to support that the General Division considered those factors at all. The Claimant didn’t point to any evidence of this, or to any other alleged procedural fairness issues. Therefore, there is no arguable case that the General Division was not procedurally fair.

There are no reasons to give the Claimant permission to appeal

[18] I reviewed the entire file to make sure the General Division didn’t make a mistake.

[19] 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.¹⁶

[20] I noted that the Claimant asked the General Division for a hearing in writing.¹⁷ The General Division held a case conference on May 2, 2023, to confirm the choice of this type of hearing.¹⁸ The Claimant did not attend the case conference.¹⁹ The General Division confirmed that the hearing would proceed in writing, since the Claimant asked for that method of proceeding.²⁰ The General Division addressed this in its decision.²¹

[21] I am satisfied there is no arguable case that the hearing method was unfair or denied the Claimant an opportunity to participate because the Claimant chose the type of hearing.

¹⁵ See AD1-3.

¹⁶ See *Karadeolian v Canada (Attorney General)*, 2016 FC 165 at paragraph 10.

¹⁷ See GD2-4.

¹⁸ See GD8-1.

¹⁹ See General Division case conference recording.

²⁰ See GD1-1.

²¹ See General Division decision at paragraph 7.

[22] The General Division found that the Claimant required 700 hours of insurable employment to qualify for EI benefits, but only accumulated 125 hours. It also found that while the Claimant thought he accumulated more hours, most of those hours were already used to establish a previous claim for benefits. Since the Claimant didn't have enough hours to establish a claim, he could not receive EI benefits.

[23] There is no arguable case that the General Division made a reviewable error in this case because the finding that the Claimant's insurable hours were not high enough to meet the requirements to establish a claim is supported by the evidence.

[24] 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.

Conclusion

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

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

Candace R. Salmon
Member, Appeal Division