Citation: *JK v Canada Employment Insurance Commission*, 2023 SST 1135

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	J. K.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated June 15, 2023 (GE-23-700)

Tribunal member:	Melanie Petrunia
Decision date:	August 21, 2023
File number:	AD-23-635

Decision

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

Overview

[2] The Applicant, J. K. (Claimant) applied for and received employment insurance (EI) regular benefits. The Respondent, the Canada Employment Insurance Commission (Commission) decided that he was entitled to be paid 15 weeks of benefits.

[3] The Claimant requested reconsideration of this decision. He said that there were reasons outside of his control why he was not able to accumulate more hours of insurable employment during his qualifying period. The Commission maintained its decision.

[4] The Claimant appealed to the Tribunal's General Division but was unsuccessful. The General Division found that the Commission had properly determined the number of weeks of benefits he was entitled to be paid. It dismissed his appeal.

[5] The Claimant is now asking to appeal the General Division decision to the Tribunal's Appeal Division. However, he needs permission for his appeal to move forward.

[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.

Issue

[7] Does the Claimant raise any 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

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]

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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 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.

No arguable case that the General Division erred

[12] The General Division considered the formula in the *Employment Insurance Act* (EI Act) for determining how many weeks of EI benefits a claimant is entitled to.[6] It examined the following factors to determine whether the Claimant was entitled to any additional weeks of benefits:

a) The regional rate of unemployment in the Claimant's area;

b) The dates of the Claimant's qualifying period;

c) The number of hours that the Claimant had accumulated in his qualifying period; and

d) The maximum weeks of entitlement in the EI Act.[7]

[13] Considering all of these factors, the General Division determined that the Claimant was entitled to 15 weeks of regular EI benefits, which is what he had received.[8]

[14] The General Division considered the Claimant's arguments that he would have accumulated more hours if it weren't for circumstances beyond his control and that he was experiencing serious financial problems.[9] It noted that it must apply the law, even if it appears unfair in the circumstances.[10]

[15] In his application for leave to appeal, the Claimant did not specify which error he believes the General Division made. He argues that the decision was unfair and undemocratic because delays by the Ministry of Transport caused him to have fewer hours of insurable employment.[11]

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[6] General Division decision at para 10.
[7] General Division decision at para 11.
[8] General Division decision at para 27.
[9] General Division decision at paras 31 and 32.
[10] General Division decision at para 35.
[11] AD1-1

[16] The Claimant referred to a second claim for EI benefits for which he was short three hours. He says that he required 700 hours of insurable employment and had accumulated 697. He argues that this should have been close enough.[12]

[17] The Claimant was asked to provide more information about the grounds he was relying on for appealing the General Division decision. He stated again that there were several reasons that he was not able to accumulate enough hours and refers to having 697 insurable hours, instead of the 700 that he needed.[13]

[18] In the matter before the General Division, the Claimant had accumulated 804 hours of insurable employment, which entitled him to 15 weeks of benefits. It is not clear which claim the Claimant is referring to with his reference to 697 hours. However, the Claimant's arguments do not point to any reviewable errors by the General Division.

[19] The General Division properly set out the law and applied the relevant facts. It determined that the Claimant was entitled to 15 weeks of benefits, which he had received. The General Division acknowledged and considered the Claimant's arguments that he should be credited more hours in the interests of fairness, and it correctly decided that it must apply the law. The Claimant's arguments do not have a reasonable chance of success.

[20] Aside from the Claimant's arguments, I have also considered the grounds of appeal. The Claimant has not pointed to any procedural unfairness on the part of the General Division, and I see no evidence of procedural unfairness. There is no arguable case that the General Division made an error of jurisdiction or based its decision on factual errors. I have not identified any errors of law by the General Division in its decision.

[21] 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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[12] AD1-1
[13] AD1B-1

Conclusion

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

Melanie Petrunia
Member, Appeal Division