



Citation: *AZ v Canada Employment Insurance Commission*, 2023 SST 1246

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: A. Z.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated July 17, 2023
(GE-23-1559)

Tribunal member: Candace R. Salmon

Decision date: September 7, 2023

File number: AD-23-724

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 A. Z. She applied for Employment Insurance (EI) sickness benefits on March 15, 2023. The Canada Employment Insurance Commission (Commission) decided she couldn't establish a claim for benefits because she didn't have enough hours of insurable employment in her 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 March 20, 2022, until March 18, 2023, and that even if the period was extended to the maximum allowed by law, the Claimant didn't accumulate enough hours of insurable employment to qualify.¹

[4] The Claimant wants to appeal the General Division decision to the Appeal Division. She 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 paragraphs 18 to 19 and 20 to 24.

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's no arguable case that the General Division made an error of fact

[9] On the application to the Appeal Division, the Claimant said the General Division made an error of fact. However, in her submission she stated that the General Division decided she didn't have enough hours of insurable employment to establish a claim. She did not dispute this finding. She said that she knew she had insufficient hours to establish a claim, but felt her case was being treated unfairly. She said the decision didn't consider all of the things that happened to her in the relevant period, and said that requiring surgery in September 2022 and March 2023, was completely outside of her control, and caused her to be less able to work.⁷

[10] The Claimant did not identify any potential errors of fact. She did not point to any findings that were based on misunderstandings of the facts, or relevant evidence that

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 AD1-5.

wasn't considered. It is clear that she disagrees with the General Division decision, but that is not a ground of appeal.

[11] Since there is no evidence that the General Division made a factual mistake, there is no arguable case that the General Division made an error of fact.

There are no reasons to give the Claimant permission to appeal

[12] The Claimant said that September 2022, was the first time she ever used EI benefits. She said that she had surgery in September 2022, and March 2023, and wasn't able to work as much as usual between the two surgeries due to her medical condition.⁸ The General Division found that she accumulated 467 hours of insurable employment, but needed 600 hours to qualify for sickness benefits, or 665 hours to qualify for regular benefits.⁹

[13] I reviewed the entire file to make sure the General Division didn't make a mistake. I considered 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.¹⁰

[14] Specifically, I noted that the General Division reviewed the initial decision and considered three potential ways the Claimant could have qualified for EI benefits. The General Division explained why none of these options could result in qualifying for benefits.¹¹

[15] 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. The law does not allow a claimant's personal situation to modify the rules. The Claimant must have enough hours of insurable employment to qualify for the specific benefit type they're seeking. The Claimant doesn't have enough hours of insurable employment for

⁸ See AD1-5.

⁹ See General Division decision at paragraphs 16 to 18, 23 to 25, and 28 to 31.

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

¹¹ See General Division decision from paragraph 8 onwards.

either regular or sickness benefits, even if her qualifying period is extended to its maximum.

[16] While I am sympathetic to the Claimant's situation and the numerous challenges she describes in her submission, the law is clear. I can only intervene in a decision if there is an arguable case that the General Division made a mistake. Here, there is no evidence to support a mistake.

[17] 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

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

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

Candace R. Salmon
Member, Appeal Division