



Citation: *MD v Canada Employment Insurance Commission*, 2023 SST 1247

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

**Applicant:** M. D.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated July 13, 2023  
(GE-23-935)

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**Tribunal member:** Janet Lew

**Decision date:** September 11, 2023

**File number:** AD-23-737

## Decision

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

## Overview

[2] The Applicant, M. D. (Claimant), is seeking leave (permission) to appeal the General Division decision.

[3] The General Division found that the Claimant did not have enough hours of insurable employment during his qualifying period to establish a claim for Employment Insurance benefits. It also found that it did not have any jurisdiction to override the qualifying requirements in the *Employment Insurance Act*.

[4] The Claimant argues that the General Division made jurisdictional and legal errors at paragraphs 29 to 32 of its decision. The Claimant does not challenge the General Division's findings that he had 119 hours of insurable employment.

[5] Before the Claimant can move ahead with his appeal, I have to decide whether the appeal has a reasonable chance of success. In other words, there has to be an arguable case.<sup>1</sup> If the appeal does not have a reasonable chance of success, this ends the matter.<sup>2</sup>

## Issue

[6] The issue is as follows: is there an arguable case that the General Division failed to exercise its jurisdiction or made a legal error when it did not award him a temporary, one-time credit of 300 insurable hours?

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<sup>1</sup> *Fancy v Canada (Attorney General)*, 2010 FC 63.

<sup>2</sup> Under section 58(2) of the *Department of Employment and Social Development (DESD) Act*, I am required to refuse permission if I am satisfied "that the appeal has no reasonable chance of success."

## **I am not giving the Claimant permission to appeal**

[7] The Appeal Division must grant permission to appeal unless the appeal has no reasonable chance of success. A reasonable chance of success exists if the General Division arguably made a jurisdictional, procedural, legal, or certain types of factual errors.<sup>3</sup>

### **Is there an arguable case that the General Division failed to exercise its jurisdiction or made a legal error?**

[8] The Claimant argues that the General Division failed to exercise its jurisdiction and that it made a legal error. In particular, he says that it failed to exercise its jurisdiction and that it made a legal error when it did not award him a temporary, one-time credit of 300 insurable hours.

[9] Under section 153.17(1) of the *Employment Insurance Act*, a claimant who made an initial claim for benefits on or after September 27, 2020 or in relation to an interruption of earnings that occurred on or after that date was deemed to have in their qualifying period additional hours of insurable employment.

[10] In the case of special benefits, such as sickness benefits, a claimant was deemed to have an additional 480 hours of insurable employment. In any other case, a claimant was deemed to have an additional 300 hours of insurable employment.

[11] However, as the Claimant notes, the increase in hours of insurable employment was a temporary measure to facilitate access to benefits during the pandemic.<sup>4</sup> The temporary measures ceased to apply on September 25, 2021 and were no longer available to claimants.<sup>5</sup>

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<sup>3</sup> Section 58(1) of the DESD Act.

<sup>4</sup> Part VIII.5 - Temporary measures to facilitate access to benefits (ss. 153.15 to 153.196)

<sup>5</sup> Section 153.196(1) of the *Employment Insurance Act*. The temporary measures generally ceased to apply on the earlier of September 25, 2021 and the day on which *Interim Order No. 8 Amending the Employment Insurance Act (Facilitated Access to Benefits)* is repealed. For fishers, the measures ceased to apply on December 18, 2021.

[12] The Claimant made his claim on January 10, 2023. By that time, the temporary measures ceased to apply, and the one-time credit was no longer available. So, the General Division did not fail to award the Claimant a temporary, one-time credit of 300 insurable hours.

[13] I am not satisfied that the Claimant has an arguable case that the General Division failed to exercise its jurisdiction or that it made a legal error regarding the one-time credit of insurable hours.

## **Conclusion**

[14] Permission to appeal is refused. This means that the appeal will not be going ahead.

Janet Lew  
Member, Appeal Division