Citation: *JK v Canada Employment Insurance Commission*, 2023 SST 1233

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 July 27, 2023 (GE-23-1306)
Tribunal member:	Candace R. Salmon
Decision date:	September 8, 2023
File number:	AD-23-734

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 J. K. He applied for Employment Insurance (EI) regular benefits on February 17, 2023. 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 February 27, 2022, until February 25, 2023, and the Claimant only accumulated 623 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 20.

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's process was unfair

[9] On the application to the Appeal Division, the Claimant said the General Division didn't follow procedural fairness.[7] He says that the General Division decision is unfair, but his submissions relate to his belief that the *Employment Insurance Act* (EI Act) should consider hours worked outside the qualifying period when calculating the number of insurable hours he accumulated.

[10] 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.

---

[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).
[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 AD1-4.

[11] The Claimant did not identify any fairness issues in this case. There is no evidence that the General Division was unfair in its application of the law or in its process. Therefore, there is no arguable case that the General Division was not procedurally fair.

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

[12] On the application to the Appeal Division, the Claimant also said the General Division made an error of fact.[8] He did not identify the factual mistake. He said that he was on long term disability and was only able to work a certain number of hours, and said the hours he previously worked outside of the qualifying period should be considered.

[13] The Claimant did not identify any potential errors of fact. He did not point to any findings that were based on misunderstandings of the facts, or relevant evidence that wasn't considered. It is clear that he disagrees with the General Division decision, but that is not a ground of appeal.

[14] 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

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

[16] 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.[9]

[17] The General Division considered the Claimant's region and regional rate of unemployment, and the number of hours of insurable employment he accumulated. It

---

[8] See AD1-5.
[9] See *Karadeolian v Canada (Attorney General)*, 2016 FC 165 at paragraph 10.

considered his qualifying period, and whether it could be extended. It considered whether any of the Claimant's previous employment could be considered in establishing a new claim. It made findings based on the evidence in all of these instances.

[18] The General Division ultimately found that the Claimant required 700 hours of insurable employment to qualify for EI benefits, but only accumulated 623 hours. Since the Claimant didn't have enough hours to establish a claim, he could not receive EI benefits.

[19] There is no arguable case that the General Division made a reviewable error 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.

[20] The Claimant admits that he doesn't meet the requirement of having 700 hours of insurable employment to qualify for EI benefits.[10] He says that he is only short approximately 80 hours and asks for a "good will gesture" for the remaining hours.

[21] Like the General Division, I am sympathetic to the Claimant's situation. I recognize his ability to work was limited by disability. However, I am bound to apply 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.

[22] I also note that the law is clear that the Tribunal has no jurisdiction to vary the number of hours required to establish a claim. The Court has found that even in instances where a claimant is short only **one hour**, the law does not give the Tribunal any power to establish a claim because the claimant didn't meet the conditions of the law.[11]

---

[10] See AD1-5.
[11] See *Attorney General of Canada v Lévesque*, 2001 FCA 304 at paragraphs 2 and 3. The Court said it was "regretful," but found the law was clear that a claimant must fulfill the legal conditions to establish a claim, and part of the legal conditions is a specific number of hours of insurable employment. See *Employment Insurance Act*, section 7(2).

Conclusion

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

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

Candace R. Salmon
Member, Appeal Division