



Citation: *BL v Canada Employment Insurance Commission*, 2023 SST 1231

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: B. L.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated July 18, 2023
(GE-23-1137)

Tribunal member: Candace R. Salmon

Decision date: September 7, 2023

File number: AD-23-708

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 B. L. He applied for Employment Insurance (EI) special benefits for family caregivers on January 15, 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 January 16, 2022, until January 14, 2023, and the Claimant didn't accumulate any hours of insurable employment but needed 600 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 35.

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.

[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.

[11] The Claimant says that the General Division decision is unfair, but his submissions relate to his belief that the *Employment Insurance Act* (EI Act) and EI program are not fair. There is no evidence that the General Division itself was unfair in

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.

its application of the law. 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

[12] The Claimant said that the EI program should consider more than the 52 weeks prior to an application when calculating hours of insurable employment. He said he has paid into EI for many years and should be able to access that money now that he needs to care for a dying parent.

[13] The General Division addressed this argument in its decision. It reiterated the Claimant's submissions about the fairness of the law and concluded that it had to make a decision based on the EI Act. Its decision was that the Claimant had zero hours of insurable employment in the qualifying period, so he couldn't qualify for benefits.

[14] The General Division also considered whether the Claimant could extend his qualifying period. It found that the Claimant had a previous claim starting on November 14, 2021, and that an extension was irrelevant because the Claimant didn't have any hours of insurable employment between November 14, 2021, and January 16, 2022.⁷

[15] 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.⁸

[16] I noted that the Claimant initially asked the General Division for a hearing by phone, but the decision cover page stated the hearing proceeded in writing.⁹ On May 9, 2023, the Claimant asked to change the form of hearing to writing. This email appears to have been missed by the Tribunal. The General Division sent a Notice of Hearing to

⁷ See General Division decision at paragraphs 26 to 28.

⁸ See *Karadeolian v Canada (Attorney General)*, 2016 FC 165 at paragraph 10.

⁹ See GD2-3.

the parties on June 15, 2023, for a teleconference hearing. The Claimant reiterated his request for a hearing in writing on June 15, 2023.¹⁰

[17] On June 20, 2023, the General Division sent a letter to the parties confirming the appeal would proceed in writing.¹¹ On the same date, the Tribunal sent a letter to the Claimant providing the opportunity to submit further information.¹² The Claimant did not send anything further, and the General Division was satisfied that he received the notice and had an opportunity to provide more evidence.¹³

[18] 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.

[19] 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.

[20] 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

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

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

Candace R. Salmon
Member, Appeal Division

¹⁰ See GD5-1.

¹¹ See GD6-1.

¹² See GD7-1 to 7-3.

¹³ See General Division decision at paragraphs 7 to 17.