



Citation: *Jl v Canada Employment Insurance Commission*, 2023 SST 116

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant: J. I.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated February 6, 2023
(GE-22-3557)

Tribunal member: Candace R. Salmon

Decision date: September 19, 2023

File number: AD-23-233

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. I. He applied for Employment Insurance (EI) parental benefits on October 6, 2022.¹ His child was born prematurely on September 26, 2022.

[3] The Claimant accumulated 428 hours of insurable employment in his qualifying period. While special benefits usually require 600 hours of insurable employment to establish a claim, during the COVID-19 pandemic special rules applied. The modified rules stated a person could qualify with only 420 hours of insurable employment. The modified rules ended on September 24, 2022.

[4] The Canada Employment Insurance Commission (Commission) says that the Claimant cannot establish a claim for parental benefits because he doesn't have enough hours of insurable employment in his qualifying period. The General Division agreed with the Commission.

[5] The Claimant believes that he should be able to start his claim from the date that he finished work, which was September 24, 2022, and coincided with the last day of COVID-19 benefit rules.

[6] The Claimant wants to appeal the General Division decision to the Appeal Division. He needs permission for the appeal to move forward.

[7] I am refusing permission to appeal because the appeal has no reasonable chance of success.

¹ See GD3-14.

Issue

[8] Is there an arguable case that the General Division made a reviewable error in this case?

I am not granting permission to appeal

[9] 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

[10] To meet this legal test, the Claimant must establish that the General Division may have made an error recognized by the law.⁵ The possible grounds of appeal to the Appeal Division are that the General Division:

- proceeded in a way that was unfair;
- acted beyond its powers or refused to exercise those powers;
- made an error of law; or
- based its decision on an important error of fact.⁶

There's no arguable case that the General Division violated procedural fairness

[11] On the application to the Appeal Division, the Claimant said that the General Division didn't provide a fair process.⁷ 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 See section 56(1) of the *Department of Employment and Social Development Act* (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 See section 58(1) of the DESD Act.

⁷ See AD1-3.

[12] The Claimant's submissions are that:

- a) No one from the Commission attended the hearing and;
- b) The General Division member didn't talk about the laws or rules that caused him to be disqualified from receiving parental benefits.

– **Commission attendance**

[13] The Commission is a party to the hearing. It has the right to make submissions and to attend the hearing. This does not mean that it must attend the hearing. The Tribunal does not and cannot direct the Commission to attend a hearing. While the Claimant may have preferred to speak to someone from the Commission, there is no arguable case that the lack of Commission attendance supports unfairness in the General Division process.

– **General Division description of the issue**

[14] The Claimant says that the General Division didn't explain the laws that caused him to be refused parental benefits.

[15] I listened to the entire hearing. While the General Division didn't refer specifically to the *Employment Insurance Act* (EI Act) or specific regulations or sections of law, he explained the law in a plain language way and addressed the legal question at issue. The hearing recording shows the following relevant communication:

- a) The General Division started the hearing by summarizing that the Claimant applied for parental benefits, but the Commission found he wasn't entitled to benefits because he didn't have enough hours of insurable employment. The General Division said it understood that the Claimant thought he should be eligible from the last date he worked, but the Commission said he could only qualify as of the date he applied for benefits. The General Division then said

that it wanted the Claimant to explain his position, and why he believed that the Commission was wrong.⁸

- b) The General Division explained that insurable hours were the issue. It confirmed whether the Claimant had any other employment in his qualifying period.⁹
- c) The General Division asked the Claimant to explain his position on whether the relevant date for starting the benefit period is the date he stopped working, or the date he applied for benefits.¹⁰
- d) The General Division asked the Claimant if there was anything else he wanted to add, or any questions he wanted to ask.¹¹
- e) The General Division member summarized the Claimant's and Commission's positions, and said those were the arguments it would consider when making a decision about when the benefit period should start.¹²

[16] Procedural fairness means that the process of an administrative hearing has to be fair. Fairness means many things, but includes knowing the test you have to meet, knowing the arguments against you, and being able to fully participate and explain your position to an impartial adjudicator.

[17] There is no arguable case that the General Division violated procedural fairness. The General Division took extensive time to explain the issue in the case and to ensure the Claimant understood the issue and had time to explain his position and to ask questions. The General Division also summarized the Claimant's position and asked if he felt like he had the opportunity to say everything he wanted to say at the hearing.

⁸ General Division hearing recording from approximately 10:35 until 11:25. While this is ten minutes into the hearing, the first ten minutes were taken up by technical issues. Once the member addressed the technical problem, the hearing began approximately ten minutes into the hearing recording.

⁹ General Division hearing recording at approximately 12:00.

¹⁰ General Division hearing recording at approximately 14:35 until 14:52.

¹¹ General Division hearing recording at approximately 19:15 and 23:30.

¹² General Division hearing recording at approximately 22:00.

[18] There is no evidence to support that the General Division process was unfair. The hearing recording shows that the General Division explained the process and the law. While it didn't use legal terminology to explain, it used plain language to address the legal test in a way that is more easy to understand than the technical EI Act. Using plain language makes accessing justice systems easier, and has been a goal of the Tribunal since as early as 2019.¹³

The Claimant's appeal has no reasonable chance of success

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

[20] 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.¹⁴

[21] The General Division found that the Claimant required 600 hours of insurable employment to qualify for EI parental benefits, but only accumulated 428 hours. It also found that while the Claimant thought he could benefit from the temporary COVID-19 rules that lowered the requirement to 420 hours, he couldn't qualify because the relevant date to establish a claim is the date when the initial claim for benefits was made.¹⁵ The Claimant filed an application for EI benefits after the special COVID-19 provisions ended. The General Division found that since the Claimant didn't have enough hours to establish a claim, he could not receive EI benefits.

[22] 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.

¹³ See Plain Language: it's about access to justice, dated June 2019 on the Social Security Tribunal of Canada's website.

¹⁴ See *Karadeolian v Canada (Attorney General)*, 2016 FC 165 at paragraph 10.

¹⁵ The General Division said at paragraph 18 of its decision that a benefit period starts on the **later** of two dates, either the Sunday in the week in which the Claimant stopped working, or the Sunday of the week in which the Claimant made a claim for EI benefits. This is a reflection of the *Employment Insurance Act*, section 10(1) requirements.

[23] The Tribunal must follow the law, including the *Department of Employment and Social Development Act* (DESD 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 DESD Act.

[24] I acknowledge that the Claimant disagrees with the General Division's decision, but that is not enough for me to intervene. I cannot reweigh the evidence to come to a conclusion more favourable for the Claimant.¹⁶

[25] I also recognize that this is very frustrating for the Claimant, and I understand why he believes it's unfair. I recognize that he planned to work longer and accumulate 600 hours of insurable employment, but his child was born prematurely, and he didn't have enough time to accumulate the necessary hours. I am sympathetic to his situation. The Tribunal has no authority to make a decision based on fairness or sympathetic situations. The court has said that:

rigid rules are always apt to give rise to some harsh results that appear to be at odds with the objectives of the statutory scheme. However, tempting as it may be in such cases (and this may well be one), adjudicators are permitted neither to re-write legislation nor to interpret it in a manner that is contrary to its plain meaning.¹⁷

[26] I am satisfied that the General Division did not misinterpret the law or fail to properly consider any relevant evidence.¹⁸ Since there is no arguable case that the General Division made an error, I cannot intervene in the decision.

Conclusion

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

Candace R. Salmon
Member, Appeal Division

¹⁶ See *Garvey v Canada (Attorney General)*, 2018 FCA 118 at paragraph 6.

¹⁷ *The Attorney General of Canada v Knee*, 2011 FCA 301 at paragraph 9.

¹⁸ See *Karadeolian v Canada (Attorney General)*, 2016 FC 165, at paragraph 10.