



Citation: *JE v Canada Employment Insurance Commission*, 2023 SST 1308

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

# **Leave to Appeal Decision**

**Applicant:** J. E.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated August 3, 2023  
(GE-23-716)

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**Tribunal member:** Janet Lew

**Decision date:** September 28, 2023

**File number:** AD-23-747

## Decision

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

## Overview

[2] The Applicant, J. E. (Claimant), is seeking leave (permission) to appeal the General Division decision. The General Division allowed the Claimant's appeal in part.

[3] The General Division found that the Claimant was not entitled to a higher weekly benefit rate of Employment Insurance benefits based on having additional insurable earnings in his qualifying period. The weekly benefit rate would stay unchanged at \$262.

[4] However, the General Division found that the Claimant was entitled to a higher weekly benefit rate after all, using an earlier start date for the claim. The Respondent, the Canada Employment Insurance Commission (Commission), proposed using the earlier date. The General Division calculated that using an earlier start date resulted in an increased weekly benefit rate of \$403.

[5] The Claimant argues that the General Division member made an important factual error. However, he did not identify any error(s). And he did not respond to the Social Security Tribunal's letter asking for information about the error(s).<sup>1</sup> The Tribunal tried to phone the Claimant many times.<sup>2</sup> It was unable to reach him directly.

[6] Section 9(2) of the *Social Security Tribunal Regulations* lets the Tribunal continue the appeal process even if it has not been able to reach the Claimant using the contact

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<sup>1</sup> The Social Security Tribunal sent a letter dated August 29, 2023 to the Claimant. The Tribunal sent the letter by email. Under section 22(3) of the *Social Security Tribunal Regulations*, when the Tribunal sends a document to a party by email, the document is considered received on the next business day. So, I can assume that the Claimant received the Tribunal's letter of August 29, 2023.

<sup>2</sup> The Tribunal tried to phone the Claimant on September 1, 2023. The Tribunal left a message with the Claimant about its letter of August 29, 2023. The Tribunal tried to phone the Claimant again on September 6 and 8, 2023, but there was no room on his voice mail service to leave any messages.

information that he gave. It is on this basis that I am assessing the Claimant's application to the Appeal Division.

[7] 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>3</sup> If the appeal does not have a reasonable chance of success, this ends the matter.<sup>4</sup>

[8] I am not satisfied that the appeal has a reasonable chance of success. Therefore, I am not giving permission to the Claimant to move ahead with his appeal.

## **Issue**

[9] Is there an arguable case that the General Division member made a factual error?

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

[10] 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 type of factual error.<sup>5</sup>

[11] For factual errors, the General Division had to have based its decision on an error that it made in a perverse or capricious manner, or without regard for the evidence before it.<sup>6</sup>

## **Is there an arguable case that the General Division member made a factual error?**

[12] The Claimant argues that General Division made a factual error. However, he did not identify any errors. As the Claimant's application is of no guidance, I will review the

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<sup>3</sup> *Fancy v Canada (Attorney General)*, 2010 FCA 63.

<sup>4</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."

<sup>5</sup> See section 58(1) of the DESD Act.

<sup>6</sup> See paragraph 58(1)(c) of the DESD Act.

underlying record and determine whether the General Division failed to properly account for any of the evidence.<sup>7</sup>

[13] In his Notice of Appeal to the General Division, the Claimant said his employer lied about the dates that he worked. This was one of the primary issues before the General Division.

[14] So, I will focus my review of the evidence on the dates that show suggested or show when the Claimant worked and what the General Division's findings were on this issue. The evidence at the General Division shows the Claimant worked as follows:

- First Application for Employment Insurance benefits – the Claimant wrote that he first worked on June 28, 2021 and last worked on October 31, 2021.<sup>8</sup>
- Claimant's second application for Employment Insurance benefits - the Claimant wrote that he first worked for this employer on April 30, 2021 and stopped working on November 30, 2021.<sup>9</sup>
- Supplementary Record of Claim – the Claimant reported that he first worked for his employer from June 28, 2021 to November 30, 2021.<sup>10</sup>
- Interim Record of Employment dated February 28, 2022 – The Commission prepared an interim record of employment for the Claimant because the employer had not provided one. The Commission prepared the record of employment from the information that the Claimant gave. The Commission accepted that the Claimant first worked on June 28, 2021 and that the last day for which he was paid was November 30, 2021.<sup>11</sup>

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<sup>7</sup> *Griffin v Canada (Attorney General)*, 2016 FC 874 at para 20.

<sup>8</sup> Claimant's first Application for Employment Insurance benefits, filed on November 9, 2021, at GD 3-7, GD 3-9, and GD 3-15.

<sup>9</sup> Claimant's second Application for Employment Insurance benefits, filed on December 30, 2021, at GD 3-19.

<sup>10</sup> Supplementary Record of Claim dated February 28, 2022, at GD 3-33.

<sup>11</sup> Interim Record of Employment dated February 28, 2022, at GD 3-36.

- Record of Employment dated April 25, 2022 – the employer wrote that the Claimant first worked on August 1, 2021 and the date for which he was last paid was October 31, 2021.<sup>12</sup>
- Supplementary Record of Claim – the Commission contacted the Claimant to clarify when he first worked and when he was last paid. The Claimant reportedly said he was not 100% sure his exact start date since he volunteered before he began working for the employer. He disagreed that his start date was in August 2021. He confirmed that the date for which he was last paid was October 31, 2021.<sup>13</sup>
- Supplementary Record of Claim – the Commission contacted the employer on May 11, 2022 to ask about the record of employment. The employer confirmed that the information on the record of employment was accurate.)<sup>14</sup>
- Supplementary Record of Claim – the Claimant told the Commission that he disagreed with the record of employment.<sup>15</sup>
- Supplementary Record of Claim – the Claimant again told the Commission that he disagreed with the employer’s record of employment. He stated that he first worked on June 27.<sup>16</sup>
- Supplementary Record of Claim - the Claimant disagreed with his employer. However, as his employer paid him cash, he did not have any documentation to disprove anything his employer said.<sup>17</sup>
- Supplementary Record of Claim - the employer denied that it ever paid cash to any employees. The employer explained that, as a political party, it has to comply with the rules of the Canada Revenue Agency, which means it cannot pay

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<sup>12</sup> Record of Employment dated April 25, 2022, at GD 3-43.

<sup>13</sup> Supplementary Record of Claim dated April 27, 2022, at GD 3-46.

<sup>14</sup> Supplementary Record of Claim dated May 11, 2022, at GD 3- 47.

<sup>15</sup> Supplementary Record of Claim dated July 6, 2022, at GD 3-50.

<sup>16</sup> Supplementary Record of Claim dated October 17, 2022, at GD 3-51.

<sup>17</sup> Supplementary Record of Claim dated January 19, 2023, at GD 3-54.

employees on a cash basis. The employer estimated that the Claimant worked for about 2.5 months. The employer stated that it would not have paid the Claimant as a volunteer.<sup>18</sup>

[15] The Claimant agreed with his employer that he was last paid for October 31, 2021.<sup>19</sup> But there is a clear discrepancy between the Claimant's evidence and his employer's record of employment about when he started work. The Claimant argued that his employer under-reported the hours and days that he worked.

[16] The General Division accepted the employer's Record of Employment dated April 25, 2022. In other words, the General Division found that the Claimant first worked on August 1, 2021 and last worked on October 31, 2021. The Claimant disagreed with the General Division's findings.

[17] But the General Division was entitled to accept the record of employment over the Claimant's evidence. The General Division explained why it accepted the employer's record of employment:

- The General Division found that it would have made no sense that the Claimant would have made an application for Employment Insurance benefits on November 9, 2021, if he was still working.
- And there were no records to support the Claimant's evidence that he worked before August 1, 2021. For instance, he did not keep a copy of his employment contract.

[18] The Claimant stated that he did not have any proof to challenge the employer's information on the record of employment.<sup>20</sup>

[19] All in all, I find that the General Division was mindful of the evidence before it. The General Division did not make any perverse or capricious findings from that

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<sup>18</sup> Supplementary Record of Claim dated January 19, 2023, at GD 3-55.

<sup>19</sup> Supplementary Record of Claim dated April 27, 2022, at GD 3-46.

<sup>20</sup> Supplementary Record of Claim dated January 19, 2023, at GD 3-54.

evidence. As a result, I am not satisfied that there is an arguable case that the General Division made a factual error regarding the Claimant's hours of work.

[20] As for the rest of the evidence, I find that the General Division correctly noted when the Claimant filed his application for Employment Insurance benefits, the amount of his earnings, and where the Claimant resided during his employment. These facts were important for determining the Claimant's benefit period and qualifying period, the applicable regional rate of unemployment, and the weekly earnings and benefit rate. Its findings were consistent with the evidence before it.

[21] Finally, in the event the Claimant gets more information (such as banking records or a T4 slip) that shows he had more insurable hours than appears on the record of employment, he could give that information to the Commission. He could ask the Commission at that point to rescind or amend its decision based on the new facts.

## **Conclusion**

[22] I am not satisfied that the appeal has a reasonable chance of success. Permission to appeal is refused. This means that the appeal will not be going ahead.

Janet Lew  
Member, Appeal Division