



Citation: *CL v Canada Employment Insurance Commission*, 2023 SST 1341

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: C. L.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated August 17, 2023
(GE-23-1773)

Tribunal member: Pierre Lafontaine

Decision date: October 5, 2023

File number: AD-23-803

Decision

[1] Leave to appeal is refused. This means the appeal will not proceed.

Overview

[2] On August 25, 2022, the Applicant (Claimant) applied for Employment Insurance (EI) benefits. The Respondent, the Canada Employment Insurance Commission (Commission), determined that the Claimant was entitled to 14 weeks of EI benefits. Upon reconsideration, the Commission maintained its initial decision. The Claimant appealed the Commission decision to the General Division of the Tribunal.

[3] The General Division found that the Claimant was only entitled to 14 weeks of EI benefits considering that he had worked 725 hours during his qualifying period and the rate of unemployment in his region was 4.2%. It also determined that he was not entitled to an extra five weeks because he did not live in the Yukon region.

[4] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. He submits that he had 830 insurable hours. He suggests that the qualifying period should be from Jan 1 to December 31. The Claimant puts forward that he could go back 25 years to inquire how many insurable hours he left on the table. He submits that the General Division made an error when it concluded he was not entitled to an extra five weeks because he did not live in the Yukon region.

[5] I must decide whether there is some reviewable error of the General Division upon which the appeal might succeed.

[6] I refuse leave to appeal because the Claimant's appeal has no reasonable chance of success.

Issue

[7] Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

Analysis

[8] Section 58(1) of the *Department of Employment and Social Development Act* specifies the only grounds of appeal of a General Division decision. These reviewable errors are that:

1. The General Division hearing process was not fair in some way.
2. The General Division did not decide an issue that it should have decided. Or, it decided something it did not have the power to decide.
3. The General Division based its decision on an important error of fact.
4. The General Division made an error of law when making its decision.

[9] An application for leave to appeal is a preliminary step to a hearing on the merits. It is an initial hurdle for the Claimant to meet, but it is lower than the one that must be met on the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove his case but must establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, that there is arguably some reviewable error upon which the appeal might succeed.

[10] Therefore, before leave can be granted, I need to be satisfied that the reasons for appeal fall within any of the above-mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success.

Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

[11] The Claimant submits that he had 830 hours with X. He suggests that the qualifying period should be from Jan 1 to December 31. The Claimant puts forward that

he could go back 25 years to inquire how many insurable hours he left on the table. He submits that the General Division made an error when it concluded he was not entitled to an extra five weeks because he did not live in the Yukon region.

[12] The Claimant applied for EI regular benefits on August 25, 2022. His benefit period was established effective August 14, 2022.

[13] The General Division correctly applied the law when it found that the qualifying period is 52 weeks immediately before the beginning of his benefit period, August 15, 2021, to August 13, 2022. The Claimant does not meet any of the exceptions to extend his qualifying period.¹

[14] The evidence shows that the Claimant had 725 insurable hours of work in his qualifying period. He lived in the Winnipeg economic region where the unemployment rate is 4.2% between August 7 and September 10, 2022, period when he applied for EI benefits. The General Division correctly determined that he was eligible for 14 weeks of EI benefits.

[15] The Claimant puts forward that he should receive an extra five weeks because he lived in a camp in the Yukon region with no mailing address.

[16] In his application for EI benefits, the Claimant stated that his residential address is in Winnipeg, Manitoba.² In his application to appeal to the General Division, the Claimant reiterated the same residential address. He also mentions that he worked in the Yukon and then went back home to Winnipeg.³

[17] The evidence shows that the Winnipeg region is the place where the Claimant has settled and ordinarily resides. He did not reside in the Yukon where he worked temporarily.⁴

¹ See section 8(2) of the *Employment Insurance Act*.

² See GD3-4.

³ See GD2-3 and GD2-8.

⁴ See *G. M. v Canada Employment Insurance Commission*, 2018 SST 770, regarding the meaning of residence under the *Employment Insurance Act*.

[18] I see no reviewable error made by the General Division when it concluded that the Claimant did not ordinarily reside in the Yukon region on the date on which his benefit period is established and therefore, he was not entitled to an extra five weeks of EI benefits.⁵

[19] I must reiterate that the requirements of the *Employment Insurance Act* do not allow any discrepancy and provide no discretion to the Tribunal. Neither the General Division nor the Appeal Division can circumvent, rewrite, or ignore the law.

[20] After reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Claimant in support of his application for leave to appeal, I find that the appeal has no reasonable chance of success. The Claimant has not set out a reason which falls into the above enumerated grounds of appeal that could possibly lead to the reversal of the disputed decision.

Conclusion

[21] Leave to appeal is refused. This means the appeal will not proceed.

Pierre Lafontaine
Member, Appeal Division

⁵ See section 12(2.3) (ii) of the *Employment Insurance Act*