



Citation: *EH v Canada Employment Insurance Commission*, 2023 SST 1396

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: E. H.
Representative: S. H.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated August 4, 2023
(GE-23-820)

Tribunal member: Pierre Lafontaine

Decision date: October 24, 2023
File number: AD-23-758

Decision

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

Overview

[2] The Applicant (Claimant) applied for Employment Insurance (EI) benefits. The Respondent, the Canada Employment Insurance Commission (Commission), determined that the Claimant doesn't have enough hours because he needs 700 hours but has only 488 hours. 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 doesn't qualify for benefits because he needs 700 hours but has worked 488 hours during his qualifying period.

[4] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. He submits that the Commission was absent from the hearing and should have been regarded as waiving their claim to the case. The Claimant submits that he should have won his case by default because he was denied his rights to examine the evidence or cross examine anyone representing the evidence as valid. The Claimant submits that he should have been allowed full access to the documents and statistical evidence the Commission relied upon.

[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?

Failure by the General Division to dismiss the Commission's claim

[11] The Claimant submits that the Commission was absent from the hearing and should have been regarded as waiving their claim to the case. He submits that he should have won his case by default because he was denied his rights to examine the evidence or cross examine anyone representing the evidence as valid. He submits that he should have been allowed full access to the documents and statistical evidence the Commission relied upon.

[12] Before the General Division, the mere fact that one party is present whereas the other party is absent is not necessarily a determining factor. The General Division is free to accept a party's evidence even in their absence.

[13] The Federal Court of Appeal has decided that the Tribunal is not bound by strict rules of evidence applicable in criminal or civil courts and that they might receive and accept hearsay evidence.¹

[14] Therefore, the General Division could not allow the Claimant's request to dismiss the Commission's claim because of their absence. There was also no reason to dismiss the Commission's evidence based on the Claimant's argument that he had no opportunity to cross-examine anyone representing the Commission's evidence as valid.²

[15] The Claimant was aware of the Commission's evidence prior to appearing before the General Division since he had received the appeal docket. He had ample time to prepare his case. The General Division allowed him to present his arguments in respect of the entire case before it, and the Claimant had an opportunity to dispute the Commission's position and file his own evidence.

[16] This ground of appeal has no reasonable chance of success.

¹ *Caron v Canada (AG)*, 2003 FCA 254. See also *Y. L. v Canada Employment Insurance Commission*, 2016 CanLII 59140 (SST).

² Olivier, A-308-81.

Insufficient hours to qualify for EI benefits

[17] The Claimant filed a claim for EI benefits on 19 November 2022.³

[18] The Claimant's qualifying period, representing the 52-week period immediately before the beginning of a benefit period, was established from November 14, 2021, to November 13, 2022.⁴ The Claimant worked 488 hours during his qualifying period.⁵

[19] The Claimant resides in the Ottawa region.⁶ The rate of unemployment in this region between November 6 and December 3, 2022, is 4.2%.⁷ The region and rate of unemployment are based on information provided to the Commission by Statistics Canada.⁸

[20] The undisputed evidence before the General Division shows that the Claimant accumulated 488 hours of insurable employment in his qualifying period. The minimum requirement for the Claimant to qualify to receive EI benefits was 700 hours.⁹ He therefore did not fulfill the conditions required by the EI Act to be eligible for EI benefits.

[21] As the General Division correctly stated, the requirements outlined in the *Employment Insurance Act* do not allow any discrepancy and provide no discretion. Neither the General Division nor the Appeal Division of this Tribunal can re-write the law and remove the defect from the Claimant's claim.

[22] Unfortunately, for the Claimant, he has not identified any errors of jurisdiction or law, nor has he identified any erroneous findings of fact that the General Division may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision.

³ GD3-13.

⁴ See article 8(1) (a) of the *Employment Insurance Act*.

⁵ See GD3-16 to GD3-19.

⁶ See GD3-4 and GD3-20.

⁷ See GD3-24.

⁸ See GD3-20 and GD3-27.

⁹ See Table in section 7(2) of the *Employment Insurance Act*.

[23] For the above-mentioned reasons, following a review of the appeal docket and the General Division decision and upon consideration of the Claimant's arguments in support of his request for leave to appeal, I find that the appeal has no reasonable chance of success.

Conclusion

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

Pierre Lafontaine
Member, Appeal Division