Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	F. J.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated August 29, 2023 (GE-23-1515)

Tribunal member:	Pierre Lafontaine
Decision date:	November 27, 2023
File number:	AD-23-873

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 510. 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 the *Employment Insurance Act* (EI Act) indicates he needs 700 hours but has worked 510 hours.

[4]   The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. He submits that the General Division made an important error of fact and that the General Division hearing was not fair.

[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?

Natural Justice

[11]   The Claimant submits that he did not have a chance to review the information on the documents provided at the hearing.

[12]   While it is true that the Claimant did not receive the docket of appeal prior to the hearing, the member proceeded at the hearing to communicate the information to the Claimant.

[13]   The Claimant did not request time to review the docket, nor did he require an adjournment of the hearing. He did not raise any issues at the hearing. The Claimant was aware that EI benefits were denied by the Commission because he did not have enough hours to qualify based on his regional rate of unemployment. An agent had previously explained to him in detail why he did not qualify for EI benefits.[1]

[14]   The Claimant 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.

[15]   I see no violation of a principle of natural justice. This ground of appeal has no reasonable chance of success.

Insufficient hours to qualify

[16]   The Claimant submits that it is unfair to rely on the unemployment rate of his region to deny his claim considering his age and the difficulties to get a job based on his experience and qualifications in his region. He submits that besides the Gaspé region, all regions require 700 hours to qualify, which constitutes an automatic denial for benefit in all regions for those who fail to meet 700 hours. The Claimant submits he has 510 insurable hours which is enough to qualify according to the Canada government website that says, "An individual should be qualified for employment benefits if the individual works between 420-720 hours".

[17]   The Claimant filed a claim for employment insurance benefits on February 22, 2023.[2]

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[1] See GD3-26.
[2] GD3-13.

[18]   The Claimant's qualifying period, representing the 52-week period immediately before the beginning of a benefit period, was established from February 27, 2022, to February 25, 2023.[3] The Claimant worked 510 hours during his qualifying period.

[19]   The Claimant resides in the Central Quebec region.[4] The rate of unemployment in this region between February 12, 2023, to March 11, 2023, is 4.8%.[5] The region and rate of unemployment are based on information provided by Statistics Canada.

[20]   An insured person qualifies if the person has had during their qualifying period at least the number of hours of insurable employment set out in the following table in relation to the regional rate of unemployment that applies to the person:[6]

TABLE

Regional Rate of Unemployment	Required Number of Hours
6% and under	700
more than 6% but not more than 7%	665
more than 7% but not more than 8%	630
more than 8% but not more than 9%	595
more than 9% but not more than 10%	560
more than 10% but not more than 11%	525
more than 11% but not more than 12%	490
more than 12% but not more than 13%	455
more than 13%	420

[21]   The Table explains the Commission's website that says you need between 420 and 700 hours to qualify based on the unemployment rate in the Claimant's region.

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[3] See article 8(1) (a) of the *Employment Insurance Act*.
[4] See GD3-20.
[5] See GD3-24.
[6] Table found at section 7(2) of the *Employment Insurance Act*.

[22]   The undisputed evidence before the General Division shows that the Claimant accumulated 510 hours of insurable employment in his qualifying period. The minimum requirement for the Claimant to qualify to receive EI benefits was 700 hours. He therefore did not fulfill the conditions required by the EI Act to be eligible for EI benefits.

[23]   Even if the overall rate of unemployment of the Province of Quebec was 7%, as advanced by the Claimant before the General Division, the required number of hours to qualify would have been 665 hours. He still did not qualify.

[24]   As the General Division correctly stated, the requirement outlined in the EI Act does not allow any discrepancy and provides 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. Only Parliament can change the qualifying requirements of the EI Act.

[25]   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.

[26]   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

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

Pierre Lafontaine
Member, Appeal Division