



Citation: *HK v Canada Employment Insurance Commission*, 2023 SST 1673

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: H. K.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated September 1, 2023
(GE-23-1662)

Tribunal member: Pierre Lafontaine

Decision date: November 23, 2023

File number: AD-23-865

Decision

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

Overview

[2] On December 13, 2022, the Applicant (Claimant) applied for Employment Insurance (EI) benefits. An initial benefit period was established effective December 4, 2022. The Respondent, the Canada Employment Insurance Commission (Commission), determined that the Claimant was entitled to 19 weeks of EI benefits.

[3] Upon reconsideration, the Commission maintained its initial decision. The Claimant appealed the Commission decision to the General Division of the Tribunal.

[4] The General Division found that the Claimant was entitled to 19 weeks of EI benefits considering that she had worked 1076 hours during her qualifying period and the rate of unemployment in her region was less than 6%. It determined that she was not entitled to extra weeks whether she lived in the Guelph or Collingwood economic region.

[5] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. The Claimant submits that she was asking for an exception based on the fact that she was only paid 19 weeks, yet she was eligible for the full amount of \$25,512. She puts forward that she has been working full time since age 18 and has paid her dues for 50 years.

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

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

Issue

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

Analysis

[9] 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.

[10] 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.

[11] At the leave to appeal stage, the Claimant does not have to prove her 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.

[12] 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?

[13] The Claimant submits that she was asking for an exception based on the fact that she was only paid 19 weeks, yet she was eligible for the full amount of \$25,512. She puts forward that she has been working full time since age 18 and has paid her dues for 50 years.

[14] The Claimant applied for EI regular benefits on December 13, 2022. Her benefit period was established effective December 4, 2022.

[15] The General Division correctly applied the law when it found that the qualifying period is 52 weeks immediately before the beginning of her benefit period, December 5, 2021, to December 3, 2022.

[16] The evidence shows that the Claimant had 1076 insurable hours of work in her qualifying period. Whether she lived in the Guelph or Collingwood economic region, the unemployment rate was less than 6%, between December 4, 2022, and January 7, 2023, period when she applied for EI benefits. The General Division correctly determined that she was eligible for 19 weeks of EI benefits.¹

[17] The law indicates the number of weeks of benefits a claimant is entitled to, depending on their number of insurable hours and regional rate of unemployment. It is purely a mathematical exercise.²

[18] I must reiterate that neither the General Division nor the Appeal Division can circumvent, rewrite, or ignore the law, even in the most sympathetic case.

[19] After reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Claimant in support of her 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.

¹ See Schedule 1, Table of weeks of benefits, in the *Employment Insurance Act*.

² *Canada (Attorney General) v Lévesque*, 2001 FCA 304.

Conclusion

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

Pierre Lafontaine
Member, Appeal Division