Citation: *MD v Canada Employment Insurance Commission*, 2024 SST 131

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	M. D.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated December 18, 2023 (GE-23-3335)

Tribunal member:	Stephen Bergen
Decision date:	February 13, 2024
File number:	AD-24-45

Decision

[1] I am refusing leave (permission) to appeal. The appeal will not proceed.

Overview

[2] M. D. is the Applicant. I will call her the Claimant because her appeal concerns her claim for Employment Insurance (EI) benefits.

[3] The Claimant first applied for EI benefits around the end of June 2022. She established a claim on July 3, 2022, and received EI benefits until she returned to work at the beginning of September 2022.

[4] The Claimant was expecting a child. In anticipation of her delivery in December, she applied for maternity and parental EI benefits on November 7, 2022. However, she continued working for a short while after that. She took a sick leave from her employer in mid-November when she began to experience some difficulty with her pregnancy. In early December 2022, she began to receive EI maternity benefits.

[5] The Respondent, the Canada Employment Insurance Commission (Commission), considered her application as a renewal of her original claim. It paid the Claimant the full 15 weeks of maternity benefits, followed by 18 weeks of parental benefits, all under the original claim. This brought her to the end of her benefit period for her first claim.

[6] When the Claimant's claim lapsed, she applied for EI again.[1] However, she could not establish a claim because the Commission said she did not have enough hours of insurable employment in her qualifying period. The Claimant asked the Commission to reconsider but it would not change its decision.

[1] The only application in the GD3 file is the November 2022 application for special benefits. The Commission originally treated the November 2022 application as a renewal so it may have only considered this application in July 2023. There is no evidence of a separate July 2023 application for benefits.

[7] The Claimant appealed to the General Division of the Social Security Tribunal. The General Division agreed with the Commission and dismissed his appeal. Now she is asking the Appeal Division for leave to appeal.

[8] I am refusing leave to appeal. The Claimant has not made out an arguable case that the General Division made an important error of fact.

Issue

[9] The issue in this appeal is as follows

- Is there an arguable case that the General Division made an important error of fact by ignoring or misunderstanding the Claimant's evidence that she lost hours of insurable employment for medical reasons?

I am refusing leave to appeal to the Claimant

General Principles

[10] For the Claimant's application for leave to appeal to succeed, her reasons for appealing would have to fit within the "grounds of appeal." The grounds of appeal identify the kinds of errors that I can consider.

[11] I may consider only the following errors:

a) The General Division hearing process was not fair in some way.
b) 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 (error of jurisdiction).
c) The General Division based its decision on an important error of fact.
d) The General Division made an error of law when making its decision.[2]

[12] To grant this application for leave and permit the appeal process to move forward, I must find that there is a reasonable chance of success on one or more

[2] This is a plain-language version of the grounds of appeal. The full text is in section 58(1) of the *Department of Employment and Social Development Act* (DESDA).

grounds of appeal. Other court decisions have equated a reasonable chance of success to an "arguable case."[3]

Important error of fact

[13] The General Division makes an important error of fact where it bases its decision on a finding that overlooks or misunderstands relevant evidence, or on a finding that does not follow rationally from the evidence.[4]

[14] The Claimant argued that the General Division made an important error of fact by ignoring her circumstances. She told the Commission that she was short on hours of insurable employment because she was sick for a period.[5] She supplied the General Division with a medical note dated December 8, 2022, which confirmed that she stopped working on November 14, 2022, because of complications associated with her pregnancy.[6]

[15] The General Division did not refer to the Claimant's reason for missing work, or to the medical note. However, this evidence was not relevant to the General Division's decision.

[16] It could only have been relevant if the Commission had the power to extend her qualifying period. Where a claimant is ill for a part of their qualifying period, the *Employment Insurance Act* (EI Act) can adjust for the illness by extending the qualifying period.[7] In some cases, this extension allows claimants to capture additional hours of insurable employment.

[17] The Commission could not extend the qualifying period in the Claimant's circumstances. The EI Act would not allow her qualifying period (for a new claim) to

---

[3] See *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; and *Ingram v Canada (Attorney General)*, 2017 FC 259.
[4] This is a paraphrase. An "important error of fact" is the error described in section 58(1)(c) of the DESDA.
[5] See GD3-39.
[6] See GD3-41.
[7] See section 8(2)(a) of the EI Act.

begin until July 3, 2022, which is when the Commission established the benefit period under her earlier claim.[8]

[18] There is no arguable case that the General Division made an important error of fact because the evidence of the Claimant's illness was not relevant to any finding on which the General Division based its decision.

[19] The law compelled the General Division to decide as it did. Under the EI Act, claimants can only establish a benefit period where they can show they have sufficient hours of insurable employment to qualify. Claimants always need at least 600 hours of insurable employment to qualify for special benefits. This means the Claimant had to accumulate at least 600 hours between July 3, 2022, and her new application for benefits.

[20] The General Division found as fact that the Claimant had only 504 hours of insurable employment. The Claimant did not dispute it and there was no evidence to the contrary.

[21] The Claimant's appeal has no reasonable chance of success.

Conclusion

[22] I am refusing leave to appeal. This means that the appeal will not proceed.

Stephen Bergen
Member, Appeal Division

[8] See section 8(1)(b) of the EI Act.