Citation: *JA v Canada Employment Insurance Commission*, 2024 SST 242

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

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

Decision under appeal:	General Division decision dated January 9, 2024 (GE-23-3426)

Tribunal member:	Stephen Bergen
Decision date:	March 8, 2024
File number:	AD-24-80

Decision

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

Overview

[2] J. A. is the Applicant. I will call him the Claimant because this application concerns his claim for Employment Insurance (EI) benefits.

[3] The Claimant's last day of work was November 2, 2023. He applied for EI regular benefits on November 7, 2023. The Respondent, the Canada Employment Insurance Commission (Commission), found that the Claimant did not qualify for benefits because he did not have enough hours of insurable employment. It said he needed 700 hours in his qualifying period, but he only had 498 hours. The Claimant asked the Commission to reconsider because he could not find work and could not support his family.

[4] The Commission would not change its decision, so the Claimant appealed to the General Division of the Social Security Tribunal. The General Division dismissed his appeal. He is now seeking permission to appeal the General Division decision to the Appeal Division.

[5] I am refusing permission to appeal. The Claimant has not made out an arguable case that the General Division made an error that I can consider.

Issues

[6] Is there an arguable case that the General Division made an error of jurisdiction?

[7] Is there an arguable case that the General Division made an error of law when it used a regional rate of unemployment of 5.7%?

I am refusing leave to appeal

General Principles

[8] For the Claimant's application for leave to appeal to succeed, his 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.

[9] 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.[1]

[10] 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 grounds of appeal. Other court decisions have equated a reasonable chance of success to an "arguable case."[2]

Error of Jurisdiction

[11] There is no arguable case that the General Division either exceeded its jurisdiction or failed to exercise its jurisdiction.

[12] The General Division has jurisdiction to consider only those issues arising from the Commission's reconsideration decision. It must consider every issue in the reconsideration decision, but it cannot consider any other issues.[3]

[13] The issue in this case was whether the Claimant had accumulated enough hours of insurable employment in his qualifying period to qualify. This was the only issue in the

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[1] 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).
[2] See *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; and *Ingram v Canada (Attorney General)*, 2017 FC 259.
[3] See section 113 of the *Employment Insurance Act*.

reconsideration decision. The General Division considered and decided this one issue> It did not decide any other issue.

[14] The Claimant did not explain why he thought the General Division made an error of jurisdiction. However, his application to the Appeal Division suggests that he disagrees with the regional unemployment rate the General Division used to determine how many hours of insurable employment he required.

[15] So, it is possible that the Claimant meant to argue that the General Division should have considered other evidence of the job market, and made its own decision on what unemployment rate was appropriate.

[16] The General Division needed to make certain findings of fact, to decide whether the Claimant had sufficient hours to qualify for benefits. For example, it needed to define when the qualifying period would have been, and it needed to find how many hours the Claimant had accumulated in the qualifying period. It also needed to find which region the Claimant ordinarily resided in at the time that he applied for benefits and what rate of unemployment applies to that region, at that time.

[17] If the General Division failed to make a required finding of fact, this could be considered as an error of law. If it based its decision on a finding that ignored or misunderstood relevant evidence, this would be an error of fact.

Error of law or fact

[18] I appreciate that the Claimant is not represented. The Federal Court has said that—at the leave to appeal stage—the Appeal Division should be especially careful with self-represented parties, who may not know how to frame their appeal.[4] Because of this, I have considered whether the General Division may have made some other kind of error in how it evaluated the unemployment rate applicable to the Claimant.

[19] In his application to the Appeal Division, the Claimant details some of the difficulties he has faced in his job search, and he cites independent sources discussing

[4] See the decision in *Karadeolian* v. *Canada (Attorney General)*, 2016 FC 615.

the Alberta job market. According to the Claimant, those sources confirm an unemployment rate in Alberta that is in excess of the 5.7% rate used by the General Division.

[20] There is no arguable case that the General Division made an error of law by failing to make a required finding of fact. It found that it could not modify the unemployment rate that applies to the Claimant.[5]

[21] Likewise, there is no arguable case that the General Division made an error of law by not verifying the accuracy of the regional rate of unemployment used by the Commission.

[22] The Claimant did not dispute that he was ordinarily resident in the Calgary region. There was evidence before the General Division that the regional rate of unemployment in the Calgary region was 5.7% at or about the time the Claimant applied for benefits.[6]

[23] The law states that the regional rate of unemployment is that rate published by Statistics Canada for the last three-month period preceding what would be the first week in a claimant's benefit period.[7] The General Division relied on regional unemployment rate evidence produced by Statistics Canada for the use of the Employment Insurance program.[8] It had no authority to consider other evidence or to find that the unemployment rate should be something different for the Claimant.

[24] There is also no arguable case that the General Division made an error of fact.

[25] The General Division could only consider evidence that was before it. To the extent the Claimant has provided "new" evidence in his application for leave, it could not

[5] See para 17of the General Division decision.
[6] See GD3-26.
[7] See section 7 and Schedule of the EI Act, and section 17(1)(a) of the *Employment Insurance Regulations* (Regulations).
[8] See GD3-27.

have been considered by the General Division. Furthermore, the Appeal Division cannot consider new evidence in deciding whether the General Division made an error.[9]

[26] I appreciate that the Claimant also presented evidence to the General Division about the circumstances in his region and the rising unemployment rate. The General Division referred to some of this in its decision.

[27] However, the General Division only makes an error of fact when it **bases its decision on a finding** that ignores or misunderstands relevant evidence.[10] As I noted above, the law is clear that the rate of unemployment for a particular region at a particular time is what Statistics Canada says it is. The Claimant's evidence was therefore not relevant to the General Division's finding that the applicable unemployment rate was 5.7%.

[28] Finally, I note that the Claimant did not dispute that he had only 498 insurable hours. According to the law, his regional unemployment rate would have had to exceed 11% for him to qualify with 498 hours. Even if the General Division could have taken the Claimant's job market evidence into account, the Claimant would have had to prove that the regional unemployment rate was at least 11% to qualify.

Conclusion

[29] I am refusing permission to appeal. This means that the appeal will not proceed.

Stephen Bergen
Member, Appeal Division

[9] *El Haddadi v. Canada (Attorney General)*, 2016 FC 482; *Mette v. Canada (Attorney General)*, 2016 FCA 276.
[10] See section 58(1)(c) of the DESDA.