



Citation: *WR v Canada Employment Insurance Commission*, 2024 SST 65

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: W. R.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated November 7, 2023
(GE-23-2476)

Tribunal member: Janet Lew

Decision date: January 22, 2024

File number: AD-23-1105

Decision

[1] Leave (permission) to appeal is refused. The appeal will not proceed.

Overview

[2] The Applicant, W. R. (Claimant), is seeking leave to appeal the General Division decision. The General Division dismissed the Claimant's appeal. It found that the Claimant had not shown that she had worked enough hours to qualify for Employment Insurance benefits. The General Division calculated that the Claimant fell short by four hours, having accumulated 661 out of a required 665 hours.

[3] The General Division also examined whether the Claimant could extend her qualifying period. If she were to extend her qualifying period, this could add additional hours. However, the General Division found that the Claimant's circumstances did not allow for an extension to the Claimant's qualifying period.

[4] The Claimant does not dispute that she had accumulated 661 hours. However, she notes that she was short by only four hours, due to circumstances beyond her control. There was a 5.5-week long strike and a two-week school closure due to wildfires that precluded her from being able to accumulate more hours. The Claimant argues that the General Division should have accepted these considerations to extend her qualifying period.

[5] Before the Claimant can move ahead with her appeal, I have to decide whether the appeal has a reasonable chance of success. In other words, there has to be an arguable case.¹ If the appeal does not have a reasonable chance of success, this ends the matter.²

¹ See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

² Under section 58(2) of the *Department of Employment and Social Development (DESD) Act*, I am required to refuse permission if I am satisfied "that the appeal has no reasonable chance of success."

[6] I am not satisfied that the appeal has a reasonable chance of success. Therefore, I am not giving permission to the Claimant to move ahead with her appeal.

Issue

[7] Is there an arguable case that the General Division misinterpreted the *Employment Insurance Act* when it decided what circumstances allowed for an extension of the qualifying period?

I am not giving the Claimant permission to appeal

[8] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success. A reasonable chance of success exists if the General Division may have made a jurisdictional, procedural, legal, or a certain type of factual error.³

[9] The General Division noted that the Claimant had insufficient hours because of strike action and wildfires, leading to school closures. The General Division considered whether either of these reasons could allow for an extension of the qualifying period.

[10] The General Division referred to section 8(2) of the *Employment Insurance Act*. That section allows for an extension of the qualifying period if an applicant was

- (a) incapable of work because of a prescribed illness, injury, quarantine or pregnancy;
- (b) confined in a jail, penitentiary or other similar institution and was not found guilty of the events for which the person is being held or any other offensive rising at the same transaction;
- (c) receiving assistance under an employment support measure ...; or
- (d) receiving payments under a provincial law on the basis of having ceased to work because continuing to work resulted in danger to the person, her unborn child or a child whom she was breast-feeding.

³ See section 58(1) of the DESD Act.

[11] The evidence does not show that the Claimant fell into any of these categories. For that reason, the qualifying period could not be extended.

[12] The General Division properly concluded that the Claimant was not eligible for an extension and that it was unable to extend her qualifying period.

[13] Much like the General Division, regrettably I do not have any authority to extend the qualifying period or to relieve the Claimant of the unforgiving requirements under the *Employment Insurance Act*.

Conclusion

[14] The appeal does not have a reasonable chance of success. Permission to appeal is refused. This means that the appeal will not be going ahead.

Janet Lew
Member, Appeal Division