



Citation: *DS v Canada Employment Insurance Commission*, 2024 SST 64

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: D. S.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated October 10, 2023
(GE-23-2031)

Tribunal member: Solange Losier

Decision date: January 19, 2024

File number: AD-23-1010

Decision

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

Overview

[2] D. S. is the Claimant in this case. He stopped working and his employer paid him severance from April 2022 until April 2023. When the severance payments ended he applied for Employment Insurance (EI) regular benefits.

[3] The Canada Employment Insurance Commission (Commission) decided that a benefit period could not be established because the Claimant didn't have enough hours of insurable employment during his qualifying period.¹ The Claimant appealed that decision to the General Division of the Tribunal.

[4] The General Division concluded the same.² It found that the Claimant didn't have enough hours of insurable employment during the qualifying period to qualify for EI benefits.

[5] The Claimant is now asking for permission to appeal the General Division decision to the Appeal Division. He argues that the General Division made an error of jurisdiction.³

[6] I am denying the Claimant's request for permission to appeal because it has no reasonable chance of success.⁴

Issue

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

¹ See initial decision at page GD3-22 and reconsideration decision at page GD3-31.

² See General Division decision at pages AD1A-1 to AD1A-5.

³ See Application to the Appeal Division at pages AD1-1 to AD1-6.

⁴ See section 58(2) of the *Department of Employment and Social Development Act* (DESD Act).

Analysis

– The test for getting permission to appeal

[8] An appeal can only proceed if the Appeal Division gives permission to appeal.⁵

[9] I must be satisfied that the appeal has a reasonable chance of success.⁶ This means that there must be some arguable ground upon which the appeal might succeed.⁷

[10] The possible grounds of appeal to the Appeal Division are that the General Division:⁸

- proceeded in a way that was unfair;
- acted beyond its powers or refused to exercise those powers;
- made an error of law;
- based its decision on an important error of fact.

[11] For the Claimant's appeal to proceed, I have to find that there is a reasonable chance of success on one of the grounds of appeal.

– The Claimant argues that the General Division made an error of jurisdiction

[12] In his application to the Appeal Division, the Claimant wrote that the General Division made an error of jurisdiction. He says that if his employer had deducted EI premiums from his severance payments then he would have been able to collect EI benefits.⁹ Because of that, he says that he has zero insurable hours.

[13] An error of jurisdiction means that the General Division didn't decide an issue it had to decide or decided an issue it did not have the authority to decide.¹⁰

⁵ See section 56(1) of the DESD Act.

⁶ See section 58(2) of the DESD Act.

⁷ See *Osaj v Canada (Attorney General)*, 2016 FC 115, at paragraph 12.

⁸ See section 58(1) of the DESD Act.

⁹ See application to the Appeal Division at pages AD1-1 to AD1-6.

¹⁰ See section 58(1)(a) of the DESD Act.

– **The General Division decided that the Claimant didn't have enough hours of insurable employment during the qualifying period, so he did not qualify for EI benefits**

[14] To qualify for EI benefits, you need to have worked enough hours during the qualifying period.¹¹ The qualifying period is usually the 52 weeks before the start of the benefit period.¹²

[15] The General Division decided that the Claimant didn't have enough hours of insurable employment during his qualifying period to qualify for EI benefits.¹³ Because of that, a benefit period could not be established.

[16] The General Division's key findings including the following:¹⁴

- The Claimant's 52 week qualifying period ran from April 10, 2022 to April 8, 2023¹⁵
- He needed 700 hours of insurable hours of employment to qualify for EI regular benefits according to his region (Toronto) and the regional rate of unemployment (6%) based on when he applied for EI benefits¹⁶
- He had zero hours of insurable employment during the qualifying period, so he didn't qualify for EI benefits¹⁷

– **There is no arguable case that the General Division made an error of jurisdiction**

[17] There is no arguable case that the General Division made an error of jurisdiction for the following reasons.

¹¹ See section 7 of the *Employment Insurance Act* (EI Act).

¹² See section 8(1) of the EI Act.

¹³ See paragraphs 1 and 2 of the General Division decision.

¹⁴ See General Division decision at pages AD1A-1 to AD1A-5.

¹⁵ See paragraph 19 of the General Division decision.

¹⁶ See paragraphs 11-14 of the General Division decision. The file shows that the Claimant applied for EI benefits on April 11, 2023, see pages GD3-3 to GD3-17.

¹⁷ See paragraphs 20, 21, 22 and 28 of the General Division decision.

[18] First, the General Division only decided the issues it had the power to decide. Its jurisdiction was limited to deciding whether the Claimant could establish a benefit period.¹⁸ To do that, it had to decide whether the Claimant had enough insurable hours during the qualifying period.

[19] The General Division correctly stated its jurisdiction in its decision. Specifically, it said that it was limited to deciding whether the Claimant had sufficient hours of insurable employment to establish a claim under section 7 of the EI Act.¹⁹

[20] The General Division decided that the Claimant didn't have enough hours of insurable employment to qualify for EI benefits during the qualifying period. In its decision, it noted that the Claimant agreed he had zero hours of insurable employment during the qualifying period.²⁰ This was also consistent with the Claimant's testimony at the hearing.²¹

[21] So, the General Division only decided the issues that it had the power to decide – whether the Claimant had enough hours of insurable employment during the qualifying period to get EI benefits.

[22] Second, the General Division did not decide any issues that it did not have the power to decide.

[23] The General Division considered the Claimant's other arguments in its decision. It acknowledged that the Claimant was arguing it was unfair that the Commission hadn't considered his 45 year work history without ever having filed an EI claim.²² As well, that the Claimant was not aware that his employer was not deducting EI premiums from his severance payments.

¹⁸ See sections 112 and 113 of the EI Act.

¹⁹ See paragraphs 23-26 of the General Division decision.

²⁰ See paragraphs 20 and 21 of the General Division decision.

²¹ Listen to audio recording at 24:33 to 24:44.

²² See paragraph 23 of the General Division decision.

[24] In response to his arguments, the General Division said that it was sympathetic to the Claimant's situation, but that it could not change the law.²³ It relied on a Federal Court of Appeal (Court) decision called *Pannu* to support its position.²⁴

[25] I reviewed the *Pannu* decision. In that case, the person was denied EI sickness benefits because she had zero hours of insurable employment during her qualifying period. She made arguments about how she had contributed for her entire period of employment and that it was unfair she was now being denied EI sickness benefits.

[26] The Court found that her complaint was really against the EI Act.²⁵ It said that the EI Act is like an insurance plan and claimants have to meet the conditions of the plan to obtain benefits. While her case was sympathetic, the Court said that it couldn't rewrite the EI Act to accommodate her.

[27] Similarly, the Claimant in this case had zero hours of insurable during his qualifying period and argued that it was unfair that he had worked many years contributing to EI program.

[28] The General Division has to follow decisions from the FCA. The Court clearly states in the *Pannu* decision that claimants have to meet the conditions of the plan in order to qualify for EI benefits and it can't rewrite the law even in sympathetic cases.

[29] So, the General Division correctly stated its jurisdiction when it decided that it did not have the power to change the law even in cases that are sympathetic.

[30] The Claimant's argument that the employer didn't deduct EI premiums from his severance payments was also not an issue that the General Division could have decided. It does not have the power to review or determine whether the employer should have deducted EI premiums from his severance payments.

²³ See paragraph 27 of the General Division decision.

²⁴ See *Pannu v Canada (Attorney General)*, 2004 FCA 90.

²⁵ See *Pannu v Canada (Attorney General)*, 2004 FCA 90, at paragraphs 3 and 4.

[31] The issue before the General Division was whether the Claimant had enough hours of insurable employment to qualify for EI benefits in order to establish a benefit period. The Claimant had zero hours of insurable employment during the qualifying period and that evidence was undisputed.

[32] So, there is no arguable case that General Division made an error of jurisdiction by not reviewing or deciding whether his employer should have deducted EI premiums from his severance payments.

[33] Aside from the Claimant's arguments, I also reviewed the file, listened to the audio recording of the General Division hearing, and examined the General Division decision.²⁶ The General Division summarized the law and used evidence to support its decision. I did not find evidence that the General Division might have ignored or misinterpreted.

Conclusion

[34] Permission to appeal is refused. This means that the appeal will not proceed.

Solange Losier
Member, Appeal Division

²⁶ The Federal Court has said that I should do this in decisions like *Griffin v Canada (Attorney General)*, 2016 FC 874 and *Karadeolian v Canada (Attorney General)*, 2016 FC 615.