



Citation: *JK v Canada Employment Insurance Commission*, 2024 SST 83

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: J. K.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated November 21, 2023
(GE-23-1760)

Tribunal member: Solange Losier

Decision date: January 26, 2024

File number: AD-23-1068

Decision

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

Overview

[2] J. K. is the Claimant in this case. When he stopped working, 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 he didn't have enough hours of insurable employment to qualify for EI benefits.¹

[4] The General Division concluded the same.² It said that he needed 700 hours of insurable employment to qualify for EI benefits, but only had 697 hours.

[5] The Claimant is now asking for permission to appeal the General Division decision to the Appeal Division.³ He needs permission for the appeal to move forward.

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

Preliminary Matter

[7] The Claimant sent the Tribunal an email on November 1, 2023.⁴ He explained that he wanted to appeal the [General Division] decision and asked if there was someone who could make a fair and unbiased decision for a hard-working Canadian.

[8] The Tribunal sent the Claimant an email on January 12, 2024 asking for additional information about his appeal to the Appeal Division. The letter asked him to

¹ See initial decision at pages GD3-19 to GD3-20 and reconsideration decision at page GD3-24.

² See General Division decision at pages AD1A-1 to AD1A-6.

³ See application to the Appeal Division at pages AD1-1 to AD1-3; AD1B-1; AD1C-1 and AD1D-1.

⁴ See pages AD1-1 and AD1B-1.

provide reasons for his appeal based on the types of errors that the Appeal Division could consider.⁵

[9] The Claimant responded saying that he was appealing the decision based on fairness and provided some additional reasons.⁶

Issue

[10] Is there an arguable case that the process at the General Division was unfair?

Analysis

[11] An appeal can proceed only if the Appeal Division gives permission to appeal.⁷

[12] I must be satisfied that the appeal has a reasonable chance of success.⁸ This means that there must be some arguable ground upon which the appeal might succeed.⁹

[13] I can only consider certain types of errors. I have to focus on whether the General Division could have made one or more of the relevant errors (this is called the “grounds of appeal”).¹⁰

[14] The possible grounds of appeal to the Appeal Division are that the General Division did one of the following:¹¹

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

⁵ The Tribunal will usually send a letter asking for additional information if an Appellant hasn't used the usual forms to submit their appeal and hasn't provided any reasons for their appeal.

⁶ See page AD1D-1

⁷ See section 56(1) of the *Department of Employment and Social Development (DESD Act)*.

⁸ See section 58(2) of the DESD Act.

⁹ See *Osaj v Canada (Attorney General)*, 2016 FC 115, at paragraph 12.

¹⁰ See section 58(1) of the DESD Act.

¹¹ See section 58(1) of the DESD Act.

[15] For the appeal to proceed, I have to find that there is a reasonable chance of success on one of the grounds of appeal.¹²

I am not giving the Claimant permission to appeal

– The Claimant argues that the General Division’s decision was unfair

[16] The Claimant wrote that he is appealing the General Division decision based on fairness. He argues that he was short only 2 hours in order to get EI benefits.¹³

[17] Also, he explains that he was looking after his late Mother’s funeral at the time. He is asking for some compassion, fairness and an unbiased decision because he is a hard working Canadian.

– There is no arguable case that the General Division acted unfairly or was biased

[18] Procedural fairness is about the fairness of the process. It includes procedural protections including the right to an unbiased decision-maker, the right of a party to be heard and to know the case against them and to be given an opportunity to respond.

[19] In other words, if the General Division proceeded in a manner that was unfair, then I can intervene.¹⁴

[20] The General Division had to decide whether the Claimant’s benefit period could be established. In doing so, it had to decide if he had proven that he had enough hours of insurable employment during the qualifying period.¹⁵

[21] The General Division found that the Claimant needed a minimum 700 hours of insurable employment in order to qualify for EI regular benefits. It determined that he didn’t have enough hours because he only had 697 hours during the qualifying period

¹² See section 58(2) of the DESD Act.

¹³ See pages AD1C-1.

¹⁴ See section 58(1)(a) of the DESD Act.

¹⁵ See section 7 of the EI Act.

(September 18, 2022 to April 1, 2023).¹⁶ This was not disputed by the Claimant as he testified that he only had 697 hours during the qualifying period.¹⁷

[22] First, the Appeal Division's mandate is limited to deciding whether the General Division might have made a reviewable error and not whether the result was unfair.¹⁸

[23] The Appeal Division does not provide an opportunity for the parties to re-argue their case in order to get a different outcome.

[24] Second, the General Division correctly stated that it had no authority to change the law, even though he was only short a few hours in order to establish a benefit period.¹⁹

[25] The General Division has to follow the *Employment Insurance Act* and decisions from the Court. The Federal Court of Appeal has already said that even if you are short one hour then it means you don't meet the requirements.²⁰

[26] This means that the General Division had no authority or discretion to grant EI benefits to the Claimant because he was only short a few hours and for compassionate reasons.

[27] The Claimant hasn't pointed out how the General Division may have been biased, but he wrote in his appeal forms that he wants an unbiased decision.

[28] The General Division is an independent decision-making body and adjudicators are presumed to be impartial. An allegation of bias cannot rest on mere suspicion, pure conjecture, insinuations, or mere impressions.²¹

¹⁶ See paragraphs 22, 23 and 26 of the General Division decision.

¹⁷ Listen to hearing recording at 13:48 to 13:57.

¹⁸ See *Marcia v Canada (Attorney General)*, 2016 FC 1367, at paragraph 34.

¹⁹ See paragraph 29 of the General Division decision and *Pannu v Canada (Attorney General)*, 2004 FCA 90 at paragraphs 3 and 4.

²⁰ See *Canada (Attorney General) v Levesque*, 2001 FCA 304, at paragraph 2.

²¹ See *Arthur v Canada (Attorney General)*, 2001 FCA 223, at paragraph 8.

[29] I reviewed the file and listened to the audio recording from the General Division hearing.

[30] The hearing lasted 24 minutes. The audio recording shows that the Claimant had a full opportunity to present his case. The General Division explained the legal test to him.²² It asked him questions throughout the hearing. The Claimant confirmed that he received the documents from the file, including the Commission's arguments, so I am satisfied that he knew the case he had to meet.²³

[31] I found no evidence that the General Division was biased. The hearing process was fair. An informed person, viewing the matter reasonably and practically and having thought the matter through, would not conclude that it was more likely than not that the General Division would not decide the case in a fair manner.

[32] As a result, it is not arguable that the General Division failed to provide a fair process or was biased. I am also satisfied that the General Division did not misinterpret or fail to properly consider any relevant evidence.²⁴

Conclusion

[33] This appeal has no reasonable chance of success.

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

Solange Losier
Member, Appeal Division

²² Listen to hearing recording at 10:36 to 12:10.

²³ Listen to hearing recording at 9:33 to 10:30.

²⁴ The Federal Court recommends doing such a review in *Karadeolian v Canada (Attorney General)*, 2016 FC 165 at paragraph 10.