Citation: *AC v Canada Employment Insurance Commission*, 2024 SST 167

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

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

Decision under appeal:	General Division decision dated December 20, 2023 (GE-23-3008)

Tribunal member:	Stephen Bergen
Decision date:	February 21, 2024
File number:	AD-24-14

Decision

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

Overview

[2] A. C. is the Applicant. He applied for Employment Insurance (EI) benefits so I will call him the Claimant.

[3] The Claimant is a Master Electrician. He works as an employee for other employers in the film industry on short-term contracts, but he also works in his own business. After finishing a contract in July 2023, he applied for EI benefits.

[4] The Respondent, the Canada Employment Insurance Commission (Commission), refused his claim. It did not consider him to be unemployed because he was self-employed in his business. The Claimant asked for a reconsideration because he did not consider the extent of his self-employment to be significant. The Commission would not change its decision.

[5] The Claimant appealed to the General Division of the Social Security Tribunal, but the General Division dismissed his appeal. Now he is asking the Appeal Division for permission to appeal the General Division decision.

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

Issues

[7] Is there an arguable case that the General Division unfairly denied the Claimant a full opportunity to be heard?

[8] Is there an arguable case that the General Division made an important error of fact by ignoring or misunderstanding the Claimant's evidence:

a) of how little time he spent working on his own business and,

b) of how the business did not provide enough income for him to support himself?

[9] Is there an arguable case that the General Division made an error of law by considering the Claimant's job search?

I am not giving the Claimant permission to appeal

General Principles

[10] 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.

[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.[1]

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

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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.

Procedural fairness

[13] The Claimant said that he was appealing because he provided the General Division with all the documents that the General Division requested, but his hearing did not resume to discuss them.

[14] There is no arguable case that the General Division's process treated the Claimant unfairly.

[15] The General Division hearing is not an inquiry. It is ultimately the Claimant's responsibility to make his case. In the usual course, appellants are expected to provide the General Division with all the documents or other evidence that they intend to rely on, either in advance of the hearing or at the hearing itself.

[16] The General Division did not request that the Claimant provide additional documents. Rather, it offered the Claimant an opportunity to submit documents post-hearing at his option. When the Claimant submitted these documents, the General Division accepted and considered them.

[17] The Claimant may have understood that he would have an opportunity to discuss these documents further with the General Division member before she made her decision. If so, the General Division was not responsible for the Claimant's misunderstanding.

[18] I have reviewed the audio recording of the General Division hearing. The member allowed that the Claimant could submit post-hearing documents. She also said she might have to send copies to the Commission so that they had an opportunity to respond.[3] However, she did not say anything to suggest she was adjourning to a later date, or that she would reconvene the hearing after she received the Claimant's additional documents.

[3] Listen to the audio recording of the General Division at timestamp 0:56:55, and also at 1:03:22.

[19] I also note that the Claimant provided tax return evidence post-hearing that helped the General Division to understand that his net earnings were significantly less than the earnings figure the Commission relied on.[4] I am not sure that it helped him to also show that his time involvement in the business was limited, but —on both questions— the General Division found in favour of the Claimant. It found that he did not spend a significant time in his business and that his net business income was not enough that he could support himself.

[20] There is no arguable case that the General Division acted unfairly.

Important error of fact

[21] The Claimant argued that the General Division was mistaken and that he was not working "full weeks" on his business. He also emphasized that he could not have lived off the income from his business. I am taking this as an argument that the General Division made an important error of fact.

[22] However, there is no arguable evidence that the General Division made an error of fact.

[23] First, when the General Division mentioned full work weeks in its Overview, and when it reached its conclusion, it was applying the definition the *Employment Insurance Regulations* (Regulations) uses for self-employed persons. The Regulations speak specifically of a self-employed person having a "full working week," in the following terms:

> " … where during any week a claimant is self-employed or engaged in the operation of a business on the claimant's own account or in a partnership or co-adventure or is employed in any other employment in which the claimant controls their working hours, the claimant is considered to have worked a full working week during that week."

[4] See para 24 of the General Division decision.

[24] Second, the General Division showed that it considered, and accepted, the Claimant's evidence that he only put a limited amount of time into the business, and that he could not be expected to make a living on his income from the business.[5] It resolved both questions in the Claimant's favour.

[25] Even if I could see an argument that the General Division may have ignored or misunderstood any of the Claimant's evidence on these two questions, it could not have affected the decision. Having accepted that the Claimant spent a limited amount of time on the business and had only a limited income from the business, the General Division relied on the other four factors (of those that it was required to consider) to decide that his involvement in his business was not of minor extent. Therefore, its decision that the Claimant was working "full work weeks" (according to the definition in the Regulations) was not based on any finding that involved the facts raised by the Claimant in this application.

[26] The General Division only makes an important error of fact where it **bases its decision** on a finding of fact that overlooks or misunderstands relevant evidence, or on a finding that does not follow rationally from the evidence.[6]

[27] The Claimant has not made out an arguable case that the General Division made an important error of fact.

Error of law

[28] The Claimant also argued that his job search was irrelevant, and that the General Division should not have taken it into account.

[29] However, there is no arguable case that the General Division made an error of law. The Regulations required it to consider six factors. The extent of the Claimant's job search is clearly relevant to the last of these factors, which the Regulations describe as

[5] See paras 18 and 24 of the General Division decision.
[6] This is a paraphrase. An "important error of fact" is the error described in section 58(1)(c) of the DESDA.

"the claimant's intention and willingness to seek and immediately accept alternate employment."[7]

[30] The General Division considered the evidence in relation to each of the six factors as it was required to do. It found in favour of the Claimant on two of the factors and against him on the other four. It also referred to case law that identified two of the six factors as particularly important.[8] One of the two "important factors" is this final factor—that a claimant must want to find a job quickly.

[31] I appreciate that the Claimant may disagree with how the General Division weighed the evidence to make its findings on each of the six factors, or with how it weighed each factor.

[32] Once again, there is no arguable case that the General Division made an error. When it comes to how the General Division's evaluates the evidence, the Appeal Division can only consider whether it ignored or misunderstood evidence or whether its findings do not follow from the available evidence. The Appeal Division cannot reweigh or re-evaluate the evidence to reach a different conclusion.[9]

[33] As for how much weight the General Division gave to the various factors used to determine if a claimant's self-employment is of a minor extent, this is a question of mixed fact and law. The General Division was applying "settled law" to the facts.[10] The Appeal Division cannot intervene on a question of mixed fact and law.[11]

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

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[7] See section 30(3)(f) of the Regulations.
[8] See *Charbonneau v Canada (Attorney General)*, 2004 FCA 61.
[9]See, for example: *Hideq v Canada (Attorney General)*, 2017 FC 439, *Parchment v Canada (Attorney General)*, 2017 FC 354, *Johnson v Canada (Attorney General)*, 2016 FC 1254, *Marcia v Canada (Attorney General)*, 2016 FC 1367.
[10] In this case, the law is section 30(3) of the Regulations, which sets out the factors that must be considered in deciding whether a claimant's involvement in self-employment may be considered, "of minor extent."
[11] *Quadir v Canada (Attorney General)*, 2018 FCA 21.

Conclusion

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

Stephen Bergen
Member, Appeal Division