Citation: *RN v Canada Employment Insurance Commission*, 2024 SST 165

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	R. N.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated December 31, 2023 (GE-23-2717)

Tribunal member:	Stephen Bergen
Decision date:	February 21, 2024
File number:	AD-24-93

Decision

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

Overview

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

[3] The Claimant applied for EI sickness benefits on February 23, 2023. The Respondent, the Canada Employment Insurance Commission (Commission), determined that he did not have enough hours of insurable employment to qualify for benefits. The Claimant had accumulated 870 hours. However, he required 1400 hours because of previous notices of violation. The Commission would not change its decision when the Claimant requested it to reconsider.

[4] The Claimant appealed to the General Division of the Social Security Tribunal (Tribunal), but the General Division dismissed his appeal. Now he is asking the Appeal Division for leave to appeal.

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

Preliminary matters

[6] In the Claimant's February 6, 2024, response to my letter, he included documents from an Ontario Social Benefits Tribunal action, a letter from the Ontario workers' compensation board (WSIB), and a Functional Abilities Form- also from WSIB.[1]

[1] See AD1B.

[7] I am not sure how these documents are relevant to the issue in this appeal, but none of these documents were available to the General Division. They are new evidence.

[8] The Appeal Division may only consider evidence that was before the General Division. With limited exceptions, the Appeal Division does not consider new evidence. The Claimant's new evidence does not fit within any of the possible exceptions.[2]

[9] I will not be considering any of this new evidence.

Issue

[10] Is there an arguable case that the General Division made an important error of fact when it found that he did not have enough hours of insurable employment to qualify?

I am refusing leave to appeal to the Claimant

General Principles

[11] 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.

[12] 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.[3]

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[2] See *Marcia v Canada (Attorney General)*, 2016 FC 1367.
[3] 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).

[13] 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."[4]

The Claimant's reasons for appealing

[14] The Claimant did not select any ground of appeal in his application to the Appeal Division. He did not point to any evidence that the General Division overlooked or misunderstood, and he did not try to show how any of the General Division's findings are unsupported by evidence. He did not question how the General Division confirmed that he needed 1400 hours or how it calculated his total number of hours of insurable employment.

[15] I wrote the Claimant on February 2, 2024, to give him another opportunity to explain why he was appealing and how his reasons fit within the grounds of appeal. On February 6, a Navigator called him to go over the letter. The Claimant sent a short response the same day, but it did not address the penalty or violation issues. He questioned how he could get more hours to qualify for sickness benefits and mentioned that he was not covered by workers' compensation benefits. He was asking for a link to an appeal form.

[16] I wrote the Claimant again on February 16, 2024, to give him one more chance to explain why he was appealing. He did not respond in writing but called the Tribunal on February 16, 2024, to say that he does not believe the General Division made an error. He said that he made an error himself by "not asking [the Commission for] the qualifying hours for further Claims."

[17] The Claimant has not explained what he means about asking for qualifying hours, but it does not appear he is identifying an error of the General Division. It appears he is talking about something he should have asked the Commission.

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[4] See *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; and *Ingram v Canada (Attorney General)*, 2017 FC 259.

[18] The Claimant is mistaken if he thinks that he can apply any of the insured hours he accumulated prior to establishing the March 2022 claim to establish a new claim. To establish a new claim in February 2023, he must have accumulated sufficient hours in the qualifying period which would be the period between March 2022 (when he established a benefit period under the March 2022 claim) and his new application.[5]

Important error of fact

[19] I appreciate that the Claimant is unrepresented. He may not have understood precisely what he should argue.[6] As a result, I have reviewed the record to see if the General Division may have ignored or misunderstood any evidence that could have given rise to an important error of fact.

[20] The General Division makes an important error of fact where it bases its decision on a finding that overlooks or misunderstands relevant evidence, or on a finding that does not follow rationally from the evidence.[7]

– Insurable hours required to qualify

[21] There is no arguable case that the General Division made an important error of fact when it found that the Claimant did not have enough hours to qualify for benefits.

[22] The Claimant did not dispute that the unemployment region applicable to his claim should be Toronto or that the unemployment rate in Toronto was 5.9% when he applied for benefits. He did not provide evidence of any additional hours beyond those set out in the Records of Employment (ROE), which totalled 870 hours, nor did he offer evidence that the ROE's had missed any of the hours he worked. Finally, he did not dispute that he had received prior notices of subsequent violations in February 2020 and October 2022.

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[5] See section 8(1) of the *Employment Insurance Act* (EI Act).
[6] I am following the direction of the Federal Court in decision such as *Karadeolian v. Canada (Attorney General)*, 2016 FC 615.
[7] This is a paraphrase. An "important error of fact" is the error described in section 58(1)(c) of the DESDA.

[23] The General Division had to apply the law. The Claimant had 870 insurable hours, and the law required him to have 1400 insurable hours to qualify.[8] The General Division had no discretion to relax that requirement because the Claimant was in difficult circumstances.

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

Conclusion

[25] I am refusing leave to appeal. This means that the appeal will not proceed.

Stephen Bergen
Member, Appeal Division

[8] See section 7.1(1) of the EI Act