



Citation: *JR v Canada Employment Insurance Commission*, 2024 SST 149

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

**Applicant:** J. R.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated December 11, 2023  
(GE-23-3062)

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**Tribunal member:** Stephen Bergen

**Decision date:** February 16, 2024

**File number:** AD-24-30

## **Decision**

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

## **Overview**

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

[3] The Claimant left his job in mid-August 2023 and applied for EI benefits. However, the Commission said it could not pay him benefits because he did not have enough hours of insurable employment. He needed 700 hours in his qualifying period but only had 692 hours. The Claimant asked the Commission to reconsider but it would not change its decision.

[4] The Claimant appealed to the General Division of the Social Security Tribunal. The General Division agreed with the Commission and dismissed his appeal. Now the Claimant 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 an important error of fact.

## **Issue**

[6] The issue in this appeal is as follows

- Is there an arguable case that the General Division made an important error of fact by ignoring or misunderstanding evidence that the Claimant missed work because of circumstances he could not control?

## I am refusing leave to appeal

### General Principles

[7] 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.

[8] 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.<sup>1</sup>

[9] 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."<sup>2</sup>

### Important error of fact

[10] 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.<sup>3</sup>

[11] The Claimant argued that the General Division made an important error of fact by ignoring his circumstances. He told the Commission that he was short on hours of insurable employment because he was forced to take non-statutory holidays and

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<sup>1</sup> 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).

<sup>2</sup> See *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; and *Ingram v Canada (Attorney General)*, 2017 FC 259.

<sup>3</sup> This is a paraphrase. An "important error of fact" is the error described in section 58(1)(c) of the DESDA.

because bad weather reduced the amount of work available. In addition, he said he was away for a few days because of dental surgery.

[12] The General Division referred to the Claimant's evidence that he was made to take non-statutory holidays and that the weather contributed to his shortfall in hours of insurable employment. It did not mention that he was away from work for two days to recover from his dental surgery.

[13] However, there is no arguable case that the General Division ignored or misunderstood relevant evidence. None of the circumstances identified by the Claimant were relevant to the decision.

[14] The Claimant was short of the 700-hour requirement by only 8 hours, and he had good reasons for why he did not have enough hours. However, his reasons do not change how many hours the law requires.

[15] The law says that a claimant cannot receive EI benefits unless they have the required number of insurable hours within their qualifying period. It specifies that this is determined by the unemployment rate in the claimant's region.<sup>4</sup> When the Claimant applied for benefits in August 2023, he lived in the Western Nova Scotia region. At that time, the rate of unemployment for this region was given as 5.7% and this meant that he needed 700 insured hours.<sup>5</sup> The Claimant did not challenge this.

[16] Having said that, the law allows a claimant to extend their qualifying period in certain circumstances. This may cause insured hours to fall within the qualifying period, that would not otherwise be included.

[17] Bad weather, downtime at work, and being forced to take holidays are not the kind of circumstances that allow a qualifying period extension.<sup>6</sup> However, an inability to work due to illness or injury, could be the basis for extending the qualifying period.

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<sup>4</sup> See section 7 of the *Employment Insurance Act* (EI Act), section 7.

<sup>5</sup> See GD3-17.

<sup>6</sup> See section 8(2) of the EI Act.

[18] In this case, the Claimant's qualifying period might possibly have been extended by the number of days he was unable to work because of his dental surgery. That means his qualifying period could have started two days earlier.

[19] That does not mean that the General Division made an error. The evidence that was before the General Division does not support a conclusion that he could have increased his insured hours by the 8 hours he needed, if his qualifying period had been extended by two days.

[20] The Claimant's qualifying period started August 14, 2022, but all of his insured hours come from an employment that started in April 2023. There is no other evidence of insured hours between August 14, 2022, and August 12, 2023, and no evidence of additional insured hours in the few days leading up to August 14, 2022. The General Division asked the Claimant for evidence of additional employment, but he did not respond.<sup>7</sup>

[21] The General Division did not refer to the Claimant's dental surgery evidence or consider whether his qualifying period should be extended, but this would not have made any difference to the decision. Based on the evidence available to the General Division, its decision could not have been different even if it had extended the qualifying period by a few days.

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

## **Conclusion**

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

Stephen Bergen  
Member, Appeal Division

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<sup>7</sup> See GD5.