



Citation: *JK v Canada Employment Insurance Commission*, 2024 SST 168

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

# **Leave to Appeal Decision**

**Applicant:** J. K.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated December 14, 2023  
(GE-23-2808)

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**Tribunal member:** Pierre Lafontaine

**Decision date:** February 21, 2024

**File number:** AD-24-16

## Decision

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

## Overview

[2] The Applicant (Claimant) worked on a temporary contract as a teacher from January to July 2023. When the contract ended, he applied for EI benefits. In his application for benefits, he said he accepted an offer of a permanent position on July 13, 2023, for the 2023/2024 school year.

[3] The Respondent (Commission) decided that the Claimant is disentitled from receiving EI benefits, because no benefits can be paid to teachers during non-teaching periods. The Claimant disagreed and appealed to the General Division.

[4] The General Division found that the Claimant did not meet one of the exceptions to get EI benefits in the non-teaching period from July 28 to September 4, 2023. Because of this, it concluded that he is disentitled from receiving EI benefits.

[5] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. He submits that the General Division made errors of fact and of law.

## Issue

[6] Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

## Analysis

[7] The law specifies the only grounds of appeal of a General Division decision.<sup>1</sup> These reviewable errors are that:

1. The General Division hearing process was not fair in some way.

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<sup>1</sup> See section 58(1) of the *Department of Employment and Social Development Act*.

2. 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.
3. The General Division based its decision on an important error of fact.
4. The General Division made an error of law when making its decision.

[8] An application for leave to appeal is a preliminary step to a hearing on the merits. It is an initial hurdle for the Claimant to meet, but it is lower than the one that must be met on the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove his case but must establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, that there is arguably some reviewable error upon which the appeal might succeed.

[9] Therefore, before I can grant leave, I need to be satisfied that the reasons for appeal fall within any of the above-mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success.

## **I am not giving the Claimant permission to appeal**

[10] The only issue before the General Division was concerning a disentitlement imposed pursuant to section 33 of the *Employment Insurance (EI) Regulations* for the period from July 28 to September 4, 2023.

[11] The Claimant disputes the General Division's interpretation of casual teaching. He submits that the contract he accepted was under the specific description of 'could be canceled at anytime' due to the original job posting that he applied for which contains the end date of the contract (July 27th, 2023) or UTR (Until Teacher Returns). He submits that this proves that had the original teacher returned, his contract would have been canceled, therefore proving that the temporary contract he was under, fits the description from Service Canada of casual teaching.

[12] Before the General Division, the Claimant testified that he was replacing a teacher who was on medical leave. But he said at any moment, the contract could be void if the teacher who was on medical leave returned to work. The Claimant said he

wasn't sure if any day would be his last or if he would return to work the following day. He added that he went to work every day he was required.

[13] The General Division noted that the Claimant's employer issued a *Record of Employment* showing that he had worked from January 3 to July 27, 2023, and was paid weekly.

[14] Under section 33(2) of the EI Regulations, a teacher who holds employment in teaching during part of the qualifying period is not entitled to receive any benefits for the weeks of unemployment, which are included in any non-teaching period. The expression "any non-teaching period" includes the summer period.

[15] Section 33(2) of the EI Regulations contains three exceptions to this general rule. These are three distinct exceptions and not one exception with three conditions to be met for it to apply. The exceptions are:

- (a) the claimant's contract of employment for teaching has terminated;
- (b) the claimant's employment in teaching was on a casual or substitute basis; or
- (c) the claimant qualifies to receive benefits in respect of employment in an occupation other than teaching.

[16] As decided by the General Division, section 33(2)(a) does not apply to the Claimant because there was no clear break in his employment within the meaning established by jurisprudence, specifically because the Claimant returned to work after the non-teaching period.<sup>2</sup>

[17] The Federal Court of Appeal has confirmed that casual or substitute teachers who enter temporary contracts for regular teaching during the school year no longer meet the definition of "casual" or "substitute" within the meaning of section 33(2)(b) of the EI Regulations even if they retain their casual/substitute status with the school.

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<sup>2</sup> *Oliver v Canada (Attorney General)*, 2003 FCA 98.

[18] The Court said that the exception of section 33(2) (b) emphasizes the performance of the employment and not the status of the teacher who holds it.<sup>3</sup>

[19] Furthermore, the Federal Court of Appeal has established that a full-time teaching contract for an extended period of time cannot not be considered “casual” or “substitute” within the meaning of section 33(2)(b) of the EI Regulations.<sup>4</sup>

[20] I understand that there was a precarious aspect to the Claimant’s term of employment. His contract could have been cancelled anytime. However, the evidence shows that the Claimant had a long-term assignment during his qualifying period. He agreed to a contract effective January 3, 2023, for a seven-month duration. The Claimant’s employment as a teacher was regular and clearly exercised in a continuous and predetermined way and not on an occasional or substitute basis within the meaning of section 33(2)(b) of the EI Regulations.<sup>5</sup>

[21] For the above-mentioned reasons, I see no reviewable error made by the General Division regarding the interpretation and scope of section 33(2) (a) and (b) of the EI Regulations.

[22] In his application for leave to appeal, the Claimant has not identified any reviewable errors such as jurisdiction or any failure by the General Division to observe a principle of natural justice. He has not identified errors in law nor identified any erroneous findings of fact, which the General Division may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision.

[23] After reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Claimant in support of his request for leave to appeal, I find that the appeal has no reasonable chance of success.

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<sup>3</sup> *Canada (Attorney General) v Blanchet*, 2007 FCA 377.

<sup>4</sup> *Arkininstall v Canada (Attorney General)*, 2009 FCA 313.

<sup>5</sup> In *Canada Employment Insurance Commission v L. D.*, 2016 CanLII 85880 (SST), the Claimant raised the same argument without success.

## **Conclusion**

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

Pierre Lafontaine  
Member, Appeal Division