



Citation: *SP v Canada Employment Insurance Commission*, 2024 SST 132

**Social Security Tribunal of Canada
Appeal Division**

Leave to Appeal Decision

Applicant: S. P.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated November 22, 2023
(GE-23-2115)

Tribunal member: Stephen Bergen

Decision date: **February 13, 2024**

File number: AD-23-1063

Decision

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

Overview

[2] S. P. is the Applicant. This appeal concerns her claim for Employment Insurance (EI) benefits so I will call her the Claimant.

[3] The Claimant applied for regular benefits on April 29, 2023, but did not qualify. The Commission said that her qualifying period was the period from April 24, 2022, to April 22, 2023. It said she had not accumulated enough hours of insurable employment in that timeframe to qualify. She had only 556 hours but needed 700 hours.

[4] The Claimant asked the Commission to reconsider. She told the Commission that during her qualifying period she had travelled to India on an emergency basis. The Commission would not change its decision, so she appealed to the General Division of the Social Security Tribunal. She told the General Division that she travelled to India because her mother died, and her father was having heart surgery.

[5] The General Division dismissed her appeal. It confirmed that the Claimant had only 580 hours of insurable employment. She needed 700 hours, so she did not have enough hours to qualify for benefits.

[6] The Claimant is now asking the Appeal Division for leave to appeal.

[7] 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.

Preliminary matters

[8] The Claimant asserted that the General Division made an important error of fact when she applied to the Appeal Division. However, it was not clear from her application why she believed the General Division made an error of fact. I wrote to her on

January 12, 2024, to emphasize the kinds of errors I can consider and to ask her to again explain why she believed the General Division made an error.

[9] The Claimant responded on February 11, 2024, but her explanation did not say how the General Division made an error of fact, or refer to any specific error.

Issue

[10] The issue in this application is whether there is an arguable case that the General Division made an important error of fact.

I am not granting leave to appeal

General Principles

[11] For the Claimant's application for leave to appeal to succeed, her 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.¹

[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."²

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* (DESD Act).

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

Important error of fact

[14] The Claimant asserted that the General Division made an important error of fact.

[15] She did not explain how the General Division made an error. Instead, she discussed some of the difficult circumstances that surrounded her application for benefits. She talked about how she had recently lost her mother and brother, and about her father's heart disease and surgery. She mentioned financial struggles and explained that her husband has to work seven days a week to pay their bills. She said that the cost of travelling out of the country so that she could be with her father had set them back and resulted in the loss of her job. She says that she struggles with depression, and with the side effects of her medication, and that her husband does not have health insurance.

[16] I take it that the Claimant believes the General Division made an error of fact because it overlooked or misunderstood her difficult circumstances.

[17] However, there is no arguable case that the General Division made an error of fact, as it is defined in the grounds of appeal.

[18] To make an important error of fact, the General Division must base 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.³

[19] In this case, the General Division considered all the evidence that was relevant to the decision it needed to make. This included evidence of her unemployment region and the applicable rate of unemployment at the time that she applied for benefits, as well as the number of hours of insurable employment she included.

[20] The Claimant lived in the Toronto region. At the time she applied for benefits, the rate of unemployment in the region was 5.7%. That means the Claimant needed to have

³ This is a paraphrase. An "important error of fact" is the error described in section 58(1)(c) of the DESD Act. The DESD Act says that the General Division will have made an error of fact if it, "based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it."

700 hours of insurable employment in her qualifying period.⁴ The Claimant agreed with the General Division member that her circumstances did not match those circumstances in which the law would allow an extension to her qualifying period.⁵

[21] I do not have the authority to determine which hours are “insurable employment” and which are not. Neither did the General Division. Only the Canada Revenue Agency (CRA) has the authority to determine which employment hours are insurable.

[22] At the request of the General Division, the Commission obtained a CRA ruling.⁶ The CRA reviewed the Claimant’s employment history and ruled that the Claimant should be entitled to 24 hours in addition to the 556 that the Commission had accepted. This meant that she had accumulated 580 hours. This was still short of the 700 hours that she required.

[23] According to the law, the Claimant does not have enough hours, so she does not qualify for benefits. I have no authority to make a compassionate exception to the law.

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

Conclusion

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

Stephen Bergen
Member, Appeal Division

⁴ See section 7(2) of the *Employment Insurance Act* (EI Act).

⁵ See para 22 of the General Division decision.

⁶ See GD9.