



Citation: *AT v Canada Employment Insurance Commission*, 2024 SST 471

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: A. T.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated February 12, 2024
(GE-23-3510)

Tribunal member: Stephen Bergen

Decision date: **May 3, 2024**

File number: AD-24-164

Decision

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

Overview

[2] A. T. is the Applicant. I will call her the Claimant because this application is about her claim for Employment Insurance (EI) benefits.

[3] The Claimant is a personal support worker. She works seven consecutive days, Monday to Sunday, followed by seven days off. This is the usual work rotation for a personal support worker in her area.

[4] On July 3, 2023, she changed clients and started a new job. She maintained essentially the same schedule she had followed with her previous client. She asked the Commission to pay her regular benefits during her off-work weeks.

[5] The Commission originally said that she was not available for work on her off weeks, but it changed its decision when the Claimant asked it to reconsider. It found that she was available. However, it also found that she could not receive benefits in her off weeks because they were not weeks of unemployment.

[6] The Claimant appealed to the General Division, which dismissed her appeal. Now she is asking the Appeal Division for permission to appeal.

[7] I am refusing permission to appeal. The Claimant has not made out an arguable case that the General Division made an important error of fact.

Issues

[8] Is there an arguable case that the General Division made an important error of fact?

I am not giving the Claimant permission to appeal

General Principles

[9] 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.

[10] 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

[11] 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

[12] In her Application to the Appeal Division, the Claimant did not select any of the grounds of appeal. In the section that asked for her to explain her appeal in more detail, she said only that she works the same hours and shifts as co-workers, and does not know why she does not qualify for benefits.

[13] I wrote to the Claimant on April 11, 2024. I set out the available grounds of appeal once again, and asked her to explain why she was appealing. The Claimant responded on April 12, 2024. She said that she was appealing because the General Division made an error of fact. She also said that she was working the same shifts as previously, and that she did not get a full week of work in the second week of her

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.

rotation. She repeated her concern that co-workers in the same situation were able to get EI benefits.

Important error of fact

[14] Although the Claimant now says that the General Division made an error of fact, she has not pointed to any piece of evidence that it may have ignored or misunderstood.

[15] The General Division understood that her schedule was little changed from her previous schedule and that she had previously received EI benefits for her days off. It understood the Claimant's evidence that others in her situation also received EI benefits on their days off.

[16] It also understood that she worked six days in the first week of her two-week rotation and that she worked more hours than a regular work week in that first week. It understood that she worked only one day in the next week, before taking seven days off.

[17] The Claimant does not dispute any of this. The General Division and the Claimant have the same understanding of these facts.

[18] The General Division based its decision on its finding that the Claimant was compensated for her extra work in the first week by extra time-off in the second week. This finding relied on the following evidence:

- The Claimant's schedule was her regular schedule and did not signal a break in the employment relationship or a shortage of work, and;
- Personal care workers require 7 days off because of the stress of the job.

The Claimant did not say that the General Division misunderstood this evidence, or that it ignored other important evidence.

[19] The General Division's decision is also based on the law. The law says that the Commission can only pay benefits for a "week of unemployment." Because she was

partially compensated for extra hours in the first week by the time-off in week two, the law deems her to have worked a full-working week in the second week. The General Division explained that this is how the Employment Insurance Act operates.³

[20] The Claimant did not argue an error of law and no error of law is apparent from the General Division's analysis.

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

Conclusion

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

Stephen Bergen
Member, Appeal Division

³ See section 11(4) of the EI Act, as well as *Canada (Attorney General) v Jean*, 2015 FCA 242, *Canada Employment Insurance Commission v PG*, 2021 SST 456.