



Citation: *SW v Canada Employment Insurance Commission*, 2024 SST 529

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: S. W.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated March 8, 2024
(GE-23-3373)

Tribunal member: Janet Lew

Decision date: May 13, 2024

File number: AD-24-265

Decision

[1] Leave (permission) to appeal is refused. The appeal will not be going ahead.

Overview

[2] The Applicant, S. W. (Claimant), is seeking leave to appeal the General Division decision.

[3] The General Division determined that the Claimant needed to have accumulated 700 hours of insurable hours of employment within her qualifying period to qualify for Employment Insurance regular benefits. It found that she did not have any insurable hours of employment. As a result, she did not qualify for Employment Insurance benefits.

[4] The Claimant argues that the General Division made jurisdictional, legal, and factual errors. She argues that it should have extended her qualifying period. That way, she would have had sufficient insurable hours. Alternatively, the Claimant argues that the General Division should have considered whether her claim should have been converted from sickness benefits to regular benefits. She received the maximum allotment of 15 weeks of sickness benefits but says that if she had been receiving regular benefits, she would have received 46 weeks of benefits instead.

[5] Before the Claimant can move ahead with the appeal, I have to decide whether the appeal has a reasonable chance of success. In other words, there has to be an arguable case.¹ If the appeal does not have a reasonable chance of success, this ends the matter.²

[6] I am not satisfied that the appeal has a reasonable chance of success. Therefore, I am not giving permission to the Claimant to move ahead with the appeal.

¹ See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

² Under section 58(2) of the *Department of Employment and Social Development (DESD) Act*, I am required to refuse permission if I am satisfied “that the appeal has no reasonable chance of success.”

Issues

[7] The issues are as follows:

- (a) Is there an arguable case that the General Division failed to extend the Claimant's qualifying period?
- (b) Is there an arguable case that the General Division failed to convert the Claimant's claim for sickness benefits to a claim for regular benefits?

I am not giving the Claimant permission to appeal

[8] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success. A reasonable chance of success exists if the General Division may have made a jurisdictional, procedural, legal, or a certain type of factual error.³

[9] For these types of factual errors, the General Division had to have based its decision on an error that it made in a perverse or capricious manner, or without regard for the evidence before it.⁴

The Claimant does not have an arguable case that the General Division failed to extend her qualifying period

[10] The Claimant does not have an arguable case that the General Division failed to extend her qualifying period. The General Division noted that the Claimant did not contest this issue at the time, so did not address the matter. (The issue that arose at the General Division was whether wage loss replacement earnings represented insurable earnings. Canada Revenue Agency issued a ruling that these earnings were not insurable.⁵)

[11] Generally, the qualifying period is the 52-week period before the beginning of a benefit period. But, as the Claimant had been off work due to illness from

³ See section 58(1) of the DESD Act.

⁴ See section 58(1)(c) of the DESD Act.

⁵ See Canada Revenue Agency ruling dated February 8, 2024, at GD 10-2.

March 9, 2022, to August 25, 2023, her qualifying period was extended.⁶ (She says that she had been deemed fit to work by July 3, 2023, but her employer and her insurer extended this time to August 26, 2023.⁷) Thus, the Claimant's qualifying period was extended by 25 weeks so that it ran from March 6, 2022, to August 26, 2023, for a total of 77 weeks.

[12] The Claimant says the General Division should have extended her qualifying period, up to the maximum number of weeks allowed for the qualifying period.⁸

[13] However, an extension is available only under limited circumstances. It is extended when the person is incapable of work because of a prescribed illness, injury, quarantine, or pregnancy.⁹ The qualifying period was extended for this reason.

[14] The qualifying period is also extended when a person is confined in a jail, penitentiary or other similar institution and was not found guilty of the offence, receiving assistance under an employment support measure, or receiving payments under a provincial law on the basis of having ceased to work because continuing to work would have resulted in danger to the person, her unborn child or a child whom she was breastfeeding.¹⁰ None of these provisions applied.

[15] The only circumstance that applied to the Claimant was if she was incapable of work because of a prescribed illness. So, did the General Division miscalculate how many weeks which the qualifying period could be extended?

[16] As the Respondent, the Canada Employment Insurance Commission (Commission) explained,¹¹ it could not extend the qualifying period beyond 25 weeks.

⁶ See Claimant's Application for Employment Insurance benefits, at GD 3-10. See also Record of Employment, at GD 3-16.

⁷ See Claimant's Application to the Appeal Division, at AD 1-8.

⁸ See section 8(7) of the *Employment Insurance Act*, which sets the maximum extension of the qualifying period at 104 weeks.

⁹ See section 8(2)(a) of the *Employment Insurance Act*.

¹⁰ See sections 8(2)(b) to (d) of the *Employment Insurance Act*.

¹¹ See Supplementary Record of Claim dated October 26, 2023, at GD 3-59, and Representations of the Commission to the Social Security Tribunal-Employment Insurance Section, at GD 4-3.

This was because the Claimant had a previous claim in which she received benefits (the sickness benefits).

[17] The Commission noted that the Claimant's qualifying period was "blocked by her previous claim—the benefit period commencement (BPC) was March 6, 2022, consequently we cannot extend beyond a previous claim because she was already paid with those hours."¹²

[18] In other words, the Claimant could not rely on or use those same hours on which the sickness benefits were based, to also establish a claim for regular benefits. This is because of section 8(1) of the *Employment Insurance Act* which reads that the qualifying period is the shorter of:

- (a) The 52-week period immediately before the beginning of a benefit period under subsection 10(1), and
- (b) The period that begins on the first day of an immediately preceding benefit period and ends with the end of the week before the beginning of a benefit period under subsection 10(1).

[19] Section 8(1)(b) of the *Employment Insurance Act* means that the qualifying period cannot be extended beyond the start date of any prior benefit period.

[20] Because of this, I am not satisfied that there is an arguable case that the General Division failed to extend the Claimant's qualifying period beyond 25 weeks.

¹² See Representations of the Commission to the Social Security Tribunal-Employment Insurance Section, at GD 4-3.

The Claimant does not have an arguable case that the General Division failed to consider whether her sickness claim should have been converted

[21] The Claimant does not have an arguable case that the General Division failed to consider whether her claim should have been converted from sickness to regular benefits.

[22] A claimant has to meet certain requirements to qualify for regular benefits. One of these includes being available for work. The *Employment Insurance Act* says that a claimant is not entitled to be paid regular benefits if the claimant was “unable to work because of a prescribed illness, injury or quarantine.”¹³

[23] The evidence shows that the Claimant was unavailable and unable to work because of a medical illness. When she applied for Employment Insurance benefits on August 28, 2023, she declared that she had been unable to work between March 9, 2022, and August 25, 2023, due to medical reasons.

[24] I am not satisfied that there is an arguable case that the General Division failed to consider whether the Claimant’s sickness claim should have been converted to a claim for regular benefits.

Conclusion

[25] The appeal does not have a reasonable chance of success. Permission to appeal is refused. This means that the appeal will not be going ahead.

Janet Lew
Member, Appeal Division

¹³ See section 18(1) of the *Employment Insurance Act*.