



Citation: *YH v Canada Employment Insurance Commission*, 2024 SST 566

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

# **Leave to Appeal Decision**

**Applicant:** Y. H.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated January 15, 2024  
(GE-22-4196)

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**Tribunal member:** Solange Losier

**Decision date:** May 20, 2024

**File number:** AD-24-61

## Decision

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

## Overview

[2] Y. H. is the Claimant in this case. He applied for Employment Insurance (EI) regular benefits on June 21, 2022.

[3] The Canada Employment Insurance Commission (Commission) decided that a benefit period could not be established because the Claimant only had 322 hours of insurable employment during the qualifying period. It said that he needed 420 hours to establish a benefit period.<sup>1</sup>

[4] The General Division dismissed the Claimant's appeal.<sup>2</sup> It found that the Claimant had not shown that he had enough hours to establish a benefit period.<sup>3</sup>

[5] The Claimant is now asking for permission to appeal the General Division decision to the Appeal Division.<sup>4</sup> He argues that the General Division didn't follow a fair process and made an error of law, an error of jurisdiction and an important error of fact.

[6] I am denying the Claimant's request for permission to appeal because there is no reasonable chance of success.

## Issue

[7] Is there an arguable case that the General Division made a reviewable error?

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<sup>1</sup> See Commission's initial decision at pages GD3-24 to GD3-25 and reconsideration decision at page GD3-30.

<sup>2</sup> See General Division decision at pages AD1A-1 to AD1A-6.

<sup>3</sup> The General Division joined this appeal with another file (GE-22-4193 / issue: antedate) involving the same Claimant. Both files were heard at the same time, but the General Division issued two separate decisions because the legal issues were different. See also, pages GDJ2-1 to GDJ2-3.

<sup>4</sup> See Application to the Appeal Division at pages AD1-1 to AD1-8.

## Analysis

[8] An appeal can proceed only if the Appeal Division gives permission to appeal.<sup>5</sup> I must be satisfied that the appeal has a reasonable chance of success. There must be some arguable ground that the appeal might succeed.<sup>6</sup>

[9] The possible grounds of appeal to the Appeal Division are that the General Division:<sup>7</sup>

- proceeded in a way that was unfair;
- acted beyond its powers or refused to exercise those powers;
- made an error of law;
- based its decision on an important error of fact.

[10] If the Claimant's appeal has no reasonable chance of success, then I must refuse permission to appeal.<sup>8</sup>

## I am not giving the Claimant permission to appeal

[11] In the Claimant's application to the Appeal Division, he argues that the General Division made several errors.

[12] This is a summary of the Claimant's arguments to the Appeal Division:<sup>9</sup>

- He is disgusted with the unfairness and partiality of the General Division member. It was a biased decision.
- The wrong hearing date was scheduled. This caused him to appear for one hearing at the last minute even though he was told that the next hearing date was cancelled.

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<sup>5</sup> See section 56(1) of the *Department of Employment and Social Development Act* (DESD Act).

<sup>6</sup> See *Osaj v Canada (Attorney General)*, 2016 FC 115, at paragraph 12.

<sup>7</sup> The relevant errors are formally known as "grounds of appeal." They are listed under section 58(1) of the DESD Act. These errors are also explained on the application to the Appeal Division at page AD1-3.

<sup>8</sup> See section 58(2) of the DESD Act.

<sup>9</sup> See page AD1-3.

- He was told that a final decision would be made in 3-4 weeks after the hearing, but the decision was only issued around 4.5 months later.
- Lastly, the General Division didn't follow the law and facts.

– **There is no arguable case that the General Division didn't follow a fair process**

[13] The principles of natural justice are concerned with procedural fairness. The right to a fair hearing before the Tribunal includes certain procedural protections. For example, the right to an impartial (unbiased) decision maker, the right of a party to know the case against him and to be given an opportunity to respond to it.

[14] If the General Division doesn't follow a fair process, then I can intervene.<sup>10</sup>

[15] An allegation of bias is a serious allegation. The law says such an allegation cannot rest on mere suspicion, pure conjecture, insinuations, or mere impressions.<sup>11</sup>

[16] The legal test for establishing bias is whether an informed person, viewing the matter realistically and practically and having thought the matter through, would conclude that it was more likely than not that the General Division member, whether consciously or unconsciously, would not decide the case in a fair manner.<sup>12</sup>

[17] I reviewed the file and listened the audio recording of the General Division hearing. The teleconference hearing lasted for approximately 54 minutes and only the Claimant attended.

[18] The audio recording from the General Division hearing reveals the following:

- The General Division listened to the Claimant as he presented his case
- The General Division asked him relevant questions when necessary
- The General Division was respectful throughout the hearing

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<sup>10</sup> See section 58(1)(a) of the DESD Act.

<sup>11</sup> See *Arthur v Canada (Attorney General)*, 2001 FCA 223

<sup>12</sup> See *Committee for Justice and Liberty v National Energy Board*, 1976 CanLII 2 (SCC).

- The General Division permitted the Claimant to submit documents after the hearing to support his case (post hearing documents)<sup>13</sup>

[19] It is not arguable that the General Division was biased. An informed person, viewing the matter reasonably and practically and having thought the matter through would not conclude that it was more likely than not that the General Division was biased.

[20] The Claimant's allegation appears to amount to a disagreement with the outcome. However, a disagreement with the outcome is insufficient to amount to bias and not a reviewable error.

[21] The Claimant also argues that the General Division scheduled the wrong hearing date and it caused him to appear at the hearing at the last minute. He says that he was told at the previous hearing date [on August 23, 2023] that the next hearing date [on August 30, 2023] was cancelled.

[22] The Claimant appears to be referring to another General Division file (tribunal file number GE-22-4195) which was scheduled to be heard by the General Division on August 30, 2023 with the same Tribunal Member.<sup>14</sup> The legal issue in that file involved a disentitlement to EI benefits due to alleged misconduct.

[23] I reviewed his application to the Appeal Division and the Claimant specifically wrote that he is appealing the decisions for the following tribunal files: GE-22-4193 (antedate) and GE-22-4196 (hours).<sup>15</sup>

[24] This means that the only appeals before the Appeal Division are GE-22-4193 and GE-22-4196 (and not GE-22-4195).

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<sup>13</sup> See post hearing documents at pages GDJ4-1 to GDJ4-4.

<sup>14</sup> The recording shows that the General Division and the Claimant discussed the other appeal file (GE-22-4195 / issue: misconduct) and hearing date for August 30, 2023. There was likely some confusion because the General Division told the Claimant that the hearing for the other file would proceed on August 30, 2023 and later said it would be rescheduled to the end of September 2023 (see audio recording from 43:06 to 54:28).

<sup>15</sup> See page AD1-1.

[25] The record for this file shows that the Claimant got the notice of hearing in advance of the hearing scheduled on August 23, 2023.<sup>16</sup> He confirmed his attendance in writing and attended the hearing.<sup>17</sup>

[26] So, it is not arguable that the General Division didn't follow a fair process. The Claimant got the notice of hearing in advance and there was no confusion about when the hearing would be held for this particular file.

[27] The Claimant also argues that he expected the General Division decision within 3-4 weeks after the hearing. The Claimant's assumption was correct because the General Division told him that it expected to issue its decision within 3-4 weeks after September 6, 2023.<sup>18</sup>

[28] The General Division issued its decision on January 13, 2024. There is no explanation in its decision or in the record on why it did not issue its decision in 3-4 weeks.

[29] It is not arguable that the General Division failed to follow a fair process when it issued its decision later than it said it would. In some cases, the General Division may need more time to render its decision depending on the complexity of the cases, volume of cases or multiple files for one person.

[30] To sum up, there is no arguable case that the General Division was biased or didn't follow a fair process. The Claimant attended the General Division hearing on August 23, 2023, and there was no confusion about when that hearing would take place. The issuance of its decision was in fact delayed, but it's possible that the General Division needed more time to render a decision, particularly since it had three files involving the Claimant.

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<sup>16</sup> The Tribunal emailed the Claimant the notice of hearing on August 15, 2023.

<sup>17</sup> See notice of hearing at GDJ1-1 to GDJ1-3 and Claimant's written confirmation of attendance at page GDJ3-1.

<sup>18</sup> See audio recording at 53:13 to 53:21.

– **There is no arguable case that the General Division made an error of law or error of jurisdiction**

[31] An error of law can happen when the General Division doesn't apply the correct law or when it uses the correct law but misunderstands what it means or how to apply it.<sup>19</sup>

[32] An error of jurisdiction means that the General Division didn't decide an issue it had to decide or decided an issue it did not have the authority to decide.<sup>20</sup>

[33] The Tribunal's authority to review decisions comes from the *Employment Insurance Act* (EI Act). The EI Act says that the Tribunal can only review reconsideration decisions made by the Commission that are appealed to the Tribunal.<sup>21</sup>

[34] In this case, the Claimant appealed the Commission's reconsideration decision dated December 2, 2022 identifying that a benefit period could not be established.<sup>22</sup>

[35] The law says that to qualify for EI benefits you need to have worked enough hours within a certain timeframe (qualifying period).<sup>23</sup> The number of hours you need depend on the rate of unemployment in your region.<sup>24</sup>

[36] The General Division set out the correct legal test to be applied in its decision.<sup>25</sup> It had to decide whether the Claimant had enough hours of insurable employment to establish a benefit period and that is exactly what it did.

[37] There is no arguable case that the General Division made an error of law or error of jurisdiction. It stated and applied the correct law. It only decided the issues it had the authority to decide and did not decide any issues it had no authority to decide.

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<sup>19</sup> See section 58(1)(b) of the DESD Act.

<sup>20</sup> See section 58(1)(a) of the DESD Act.

<sup>21</sup> See sections 112 and 113 of the *Employment Insurance Act* (EI Act). It sets out the Tribunal's authority to review reconsideration decisions made by the Commission that are appealed to the Tribunal.

<sup>22</sup> See Commission's reconsideration decision at page GD3-30.

<sup>23</sup> See section 7 of the EI Act.

<sup>24</sup> See section 7(2)(b) of the EI Act and section 17 of the *Employment Insurance Regulations* (EI Regulations).

<sup>25</sup> See paragraphs 9-11 and 14-15 of the General Division decision.

– **There is no arguable case that the General Division made an important error of fact**

[38] An error of fact happens when the General Division has “based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it.”<sup>26</sup>

[39] Not all errors of fact will allow me to intervene. An error of fact needs to be important enough that the General Division relied on it to make a finding that impacted the outcome of the decision.

[40] As noted above, the General Division had to decide whether the Claimant had enough hours of insurable employment to establish a benefit period.<sup>27</sup>

[41] I reviewed the General Division’s key findings.

[42] The General Division accepted that the Claimant’s region was Toronto and the regional rate of unemployment at the time he applied was 6.3%.<sup>28</sup>

[43] The General Division found that the Claimant’s 52 week qualifying period ran from June 20, 2021 to June 18, 2022.<sup>29</sup>

[44] The General Division explained that in response to the Covid-19 pandemic, the government implemented special measures to assist Canadians to get EI benefits. One of them was called a “common entrance requirement” of 420 hours.<sup>30</sup>

[45] This meant that for any EI claims between September 26, 2021 to September 24, 2022, a person would need to have 420 hours of insurable employment to get EI benefits.

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<sup>26</sup> See section 58(1)(c) of the DESD Act.

<sup>27</sup> See Commission’s reconsideration decision at page GD3-30.

<sup>28</sup> See paragraph 12 of the General Division decision and pages GD3-22 to GD3-23.

<sup>29</sup> See paragraphs 7, 16-17 of the General Division decision.

<sup>30</sup> See paragraph 13 of the General Division decision.



[46] The file shows that the Claimant applied for EI benefits on June 21, 2022, which means the above 420 hour common entrance requirement applied to him.<sup>31</sup>

[47] The General Division considered whether he had any additional hours of insurable employment from another employer.<sup>32</sup> The Claimant told the General Division that he worked part-time at another college, but it was only 3 hours a week.<sup>33</sup>

[48] The General Division noted that even with the additional part-time hours, he *likely* would not have had enough to qualify for EI benefits.<sup>34</sup>

[49] The General Division also noted that the Claimant and Commission had previously discussed the other part-time employment he had.<sup>35</sup> However, the Claimant had declined to obtain an ROE from that employer as he did not want to establish a benefit period from June 2022.

[50] The Claimant did not submit an ROE from that employment to the General Division, so those additional hours were not included.

[51] Finally, the General Division decided that the Claimant hadn't proven he had enough hours because he only had 322 hours during the 52 week qualifying, but needed 420 hours.<sup>36</sup> Because of that, a benefit period could not be established.

[52] The General Division did make an error of fact in its decision.

[53] Specifically, the General Division erred when it wrote in its decision that the Claimant had 420 hours and accepted that number as correct.<sup>37</sup> This was clearly a typographical error because if the Claimant had 420 hours, then a benefit period could

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<sup>31</sup> See page GD3-14.

<sup>32</sup> See paragraph 19 of the General Division decision.

<sup>33</sup> See audio recording 14:34 to 15:15.

<sup>34</sup> See paragraph 19 of the General Division decision.

<sup>35</sup> See page GD3-28.

<sup>36</sup> See paragraphs 2, 21, 23 of the General Division decision

<sup>37</sup> See paragraphs 18 and 20 of the General Division decision.

have been established. In a subsequent paragraph, the General Division correctly stated that “he needs 420 hours but has worked 322 hours”.<sup>38</sup>

[54] The General Division did make an error of fact, but it was a minor typographical error that did not affect the outcome.

[55] The General Division’s key findings were consistent with the evidence. An appeal to the Appeal Division is not a new hearing. I cannot reweigh the evidence to come to a conclusion more favourable for the Claimant.<sup>39</sup>

[56] There is no arguable case that the General Division made an important mistake about any of the facts in this case.

## **Conclusion**

[57] I reviewed the file, examined the decision under appeal and did not find any key evidence that the General Division might have ignored or misinterpreted.<sup>40</sup>

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

Solange Losier  
Member, Appeal Division

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<sup>38</sup> See paragraph 21 of the General Division decision.

<sup>39</sup> See *Garvey v Canada (Attorney General)*, 2018 FCA 118.

<sup>40</sup> See *Karadeolian v Canada (Attorney General)*, 2016 FC 615, which recommends doing such a review.