Citation: *AE v Canada Employment Insurance Commission*, 2024 SST 831

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	A. E.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated April 10, 2024 (GE-23-2646)

Tribunal member:	Janet Lew
Decision date:	July 17, 2024
File number:	AD-24-353

Decision

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

Overview

[2] The Applicant, A. E. (Claimant), is seeking leave to appeal the General Division decision dated April 10, 2023.

[3] The General Division found that the Claimant had voluntarily left his employment. It also found that he had not shown just cause (in other words, a reason the law accepts) for leaving his employment when he did. The General Division found that the Claimant did not have just cause because he had reasonable alternatives to leaving. As a result, he was disqualified from receiving Employment Insurance benefits.

[4] The General Division also found that the Claimant had not accumulated enough insurable hours after he left his employment to qualify for Employment Insurance benefits.

[5] The Claimant argues that he had sufficient insurable hours to qualify for benefits. He argues that the General Division member made jurisdictional, procedural, legal, and factual errors on this issue. He does not dispute the General Division's findings that he did not have just cause when he voluntarily left his employment.

[6] 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]

[7] 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.

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[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

[8] The issues are as follows:

a) Is there an arguable case that the General Division breached the principles of natural justice?

b) Is there an arguable case that the General Division made a legal error when it calculated whether the Claimant had sufficient hours to qualify for Employment Insurance benefits?

c) Is there an arguable case that the General Division made a factual error about whether he had sufficient hours to qualify for benefits?

I am not giving the Claimant permission to appeal

[9] 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]

[10] 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 breached the principles of natural justice

[11] The Claimant does not have an arguable case that the General Division breached the principles of natural justice.

[12] The Claimant argues that he did not get a fair hearing or that he did not get a chance to fully present his case. He says that the General Division member interrupted him during the hearing when he was trying to read a quote about procedural fairness.

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

He cites paragraph 9 of the General Division decision. There, the General Division wrote, “The Appellant asked for his appeal to be accepted based on section 58 of the *Administrative Tribunals Act*.”

[13] In other words, the Claimant says the General Division member did not give him a fair chance to argue why section 58 of the B.C. *Administrative Tribunals Act* governed the actions of the Respondent, the Canada Employment Insurance Commission (Commission), and the General Division, during administrative proceedings.

[14] As the General Division member noted, the B.C. *Administrative Tribunals Act* is a provincial statute. It is not enforceable against a federal entity. And, as a federal body, the General Division does not have any authority to make decisions pursuant to the B.C. *Administrative Tribunals Act*.

[15] Setting aside the jurisdictional issue, it is unclear how the subject matter of section 58 of the *Administrative Tribunals Act* was relevant to the Claimant’s appeal at the General Division. The section falls into Part 9 of the *Administrative Tribunals* Act, which deals with accountability and judicial review. The section itself deals with the standard of review that applies in a judicial review proceeding.

[16] The appeal at the General Division was not in the nature of a judicial review proceeding, so there was no reason or any basis for the General Division to consider the issue of the standard of review or to apply section 58 of the *Administrative Tribunals Act*.

[17] The issue before the General Division was whether the Claimant had voluntarily left his employment, whether he had just cause for having voluntarily left his employment, and whether the Claimant had sufficient insurable hours to qualify for Employment Insurance benefits. The General Division focused on these issues.

[18] The Claimant was entitled to a fair hearing. This included being given the opportunity to fairly present his case and to having an impartial decision-maker faithfully discharge their duties. But the Claimant’s entitlement to a fair hearing did not extend to making full arguments that were clearly irrelevant to the proceedings. Part of a decision-

maker's duties is to effectively manage a hearing, so it was appropriate for the General Division member to steer the Claimant towards issues that were relevant to the proceedings.

[19] On top of that, although the Claimant says he did not get a chance to fully present his case, he was not limited to giving oral testimony or making oral submissions. He could have filed written records and arguments. Indeed, he filed several documents and audio files with the Social Security Tribunal. The General Division accepted these documents and audio files, including those that the Claimant filed after the hearing.

[20] I am not satisfied that there is an arguable case that the General Division breached the principles of natural justice or that the Claimant did not get a fair hearing or a fair chance to present his case.

The Claimant does not have an arguable case that the General Division made a legal error when it calculated whether he had sufficient hours to qualify for benefits

[21] The Claimant does not have an arguable case that the General Division made a legal error about whether he had sufficient hours to qualify for Employment Insurance benefits. The Claimant says the General Division used the wrong period to calculate whether he had enough hours. He says the General Division should have included the hours he had from his employment before December 7, 2022. But the General Division did in fact use the correct period.

[22] The General Division considered whether the Claimant had sufficient insurable hours to qualify for benefits.[5] The General Division calculated whether the Claimant had sufficient hours in the period AFTER he left his employment on December 7, 2022. Having determined that the Claimant did not have just cause for having voluntarily left his employment, the General Division determined that it could not consider the hours

[5] See General Division decision at paras 52 to 63.

that the Claimant had accumulated from the employment that he held up to December 7, 2022.

[23] This was how the General Division interpreted section 30(1)(a) of the *Employment Insurance Act.* That section reads:

> **30. Disqualification—misconduct or leaving without just cause**
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> (1) A claimant is disqualified from receiving any benefits if the claimant lost any employment because of their misconduct or voluntarily left any employment without just cause, unless
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> > (a) the claimant has, since losing or leaving the employment, been employed in insurable employment for the number of hours required by section 7 or 7.1 to quality to receive benefits.

[24] The Claimant does not dispute the General Division's findings that he did not have just cause for having voluntarily left his employment, or that he did not have any reasonable alternatives to leaving. So, section 30(1)(a) of the *Employment Insurance Act* applied.

[25] Section 30(1)(a) of the *Employment Insurance Act* makes it clear that a claimant can qualify for benefits even after a disqualification. But they can only include the insurable hours they have accumulated "since losing or leaving the employment."

[26] The General Division used the correct period to calculate whether the Claimant had sufficient hours to qualify for Employment Insurance benefits. The General Division included only the insurable hours that the Claimant accumulated after he left his employment on December 7, 2022.

[27] I am not satisfied that there is an arguable case that the General Division made a legal error when it calculated whether the Claimant had sufficient hours to qualify for benefits.

The Claimant does not have an arguable case that the General Division made a factual error about whether he had sufficient hours to qualify for benefits

[28] The Claimant does not have an arguable case that the General Division made a factual error about whether he had sufficient hours to qualify for Employment Insurance benefits. When the General Division calculated whether he had sufficient hours in the period AFTER he left his employment on December 7, 2022, it considered all of the records of employment. The General Division's findings were consistent with the evidence.

[29] The Claimant argues that the General Division overlooked much of the evidence regarding his hours:

- an agent for the Commissioner told him that he had enough hours and earnings to qualify for benefits.[6] An agent assured him that "those hours will be included in the calculation."[7] She told him that she was adding up all the hours from the records of employment that they had on file. She said, "You definitely have enough hours and earnings to qualify for Employment Insurance."[8]

- The Commission wrote to him on May 11, 2023, stating that he had 655 hours.[9]

- The Claimant requested records of employment. In other words, he is still waiting for records of employment that he says show he has more hours.

– **The agent's comments**

[30] The Claimant wants to rely on an agent's comments to him that he had enough hours to qualify for benefits. However, it is clear from listening to the agent that she was

[6] Undated audio recording, at AD01B, which is an extract from audio recording at GD16A.
[7] At approximately 1:29 of an undated audio recording, at AD01B.
[8] At approximately 1:42 of an undated audio recording, at AD01B (and approximately 1:45 of the audio recording at GD16A).
[9] See Commission's letter dated May 11, 2023, at GD 3-37 (and AD 1-11).

going to have to verify that there was nothing that would disqualify the Claimant from receiving benefits. In other words, it was not official that he could use all of those hours.

[31] The agent noted that the Record of Employment indicated that the Claimant had been dismissed.[10] She wanted to be satisfied that the dismissal was not for cause. For instance, he might have been dismissed because the employer did not consider him the right fit for the position.[11] If the employer did not dismiss the Claimant for cause, then this would not affect his entitlement to benefits. She implied that, if he had been dismissed for cause (such as for misconduct), however, then he would be disqualified from benefits.[12]

[32] The agent noted that the Claimant had applied for benefits on August 16, 2023.[13] The agent indicated that she would review the hours in the 52-week qualifying period before he applied for benefits. So, she said that she would include all of the hours in the records of employment going back to August 16, 2022.

[33] However, it is unclear whether the agent was aware of the previous claim filed on April 15, 2023, or that the Claimant had voluntarily left his employment on December 7, 2022. The Record of Employment for this job says that the Claimant quit this employment. These were important considerations.

[34] The General Division did not ignore the evidence regarding the Claimant's phone calls with the Commission.[14] The General Division found that it simply did not establish that the Claimant had 700 or more insurable hours. Although the agent said that the Claimant had enough hours, it was unclear to the General Division what period or what hours she considered from which employment. It was also unclear to the General Division whether the agent was aware that the Claimant had voluntarily left his

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[10] The hearing file does not include a Record of Employment that says the Claimant was dismissed.
[11] At approximately 4:25 of the audio recording at GD16A.
[12] See section 30 of the *Employment Insurance Act*.
[13] The application in the hearing file shows that the Claimant applied for benefits on April 15, 2023. See GD 3-15.
[14] See General Division decision at para 59 to 60.

employment on December 7, 2022, or if the agent had determined whether he had just cause or any reasonable alternatives to leaving that employment.

[35] The General Division found that the agent's comments simply fell short of showing that the Claimant had worked 700 insurable hours since leaving his job without cause on December 7, 2022. The General Division's findings were consistent with the evidence.

– **The Commission stated that the Claimant had 655 insurable hours**

[36] In its initial letter, the Commission wrote that the Claimant had 655 hours of insurable employment.[15] It also found that he needed 700 hours of insurable employment to qualify for benefits.

[37] However, the Commission also wrote that the Claimant accumulated these 655 hours between April 10, 2022, and April 8, 2023.

[38] There is no breakdown from the Commission as to when the Claimant accumulated the 655 hours. There are no accompanying records of employment for the early part of 2022. But it can be assumed that the Claimant accumulated some of the 655 hours sometime between April 10, 2022, and December 7, 2022. This is because the General Division determined that the Claimant had accumulated 202 hours after December 7, 2022.

[39] As the General Division explained, because of section 30(1)(a) of the *Employment Insurance Act*, it could only consider the insurable hours that the Claimant had accumulated since leaving his employment on December 7, 2022.

[40] So, because the period (in which the 655 hours were found) extended back to April 10, 2022, the Commission's determination that the Claimant had 655 hours did not establish that the Claimant had accumulated these hours since leaving his employment on December 7, 2022.

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[15] See Commission's letter dated May 11, 2023, at GD 3-37 (and AD 1-11).

[41] Besides, even if the Claimant had accumulated 655 insurable hours after he left his employment on December 7, 2022, this still would be insufficient. This falls short of the 700 hours that the Claimant needed to qualify for benefits.

– **Outstanding records of employment**

[42] It may be that the Claimant has additional insurable hours. As he says, he has requested records of employment that will show he has additional hours. However, the General Division could only make a determination based on the evidence before it.

[43] The hearing file included four records of employment.[16] As I have noted above, because of section 30(1)(a) of the *Employment Insurance Act*, the General Division could only consider the insurable hours that the Claimant had accumulated since leaving his employment on December 7, 2022. This meant that the General Division could not consider the Claimant's 88 insurable hours that he had from his employment between November 21, 2022, and December 7, 2022.

[44] The General Division accepted the hours from the other records of employment. The Claimant earned these hours after he left his employment on December 7, 2022. There was a total of 202 hours.

[45] The General Division found that, absent testimony or documents showing that the Claimant had worked more insurable hours since leaving his job without just cause, it was unable to find that he had worked the necessary 700 hours to qualify for benefits.

[46] If the Claimant's employer(s) produce(s) these records of employment or the Claimant is somehow able to establish that he has additional hours, he can produce these to the Commission. At that point, the Commission can decide whether any additional hours establish that the Claimant had sufficient insurable hours to qualify for benefits.

[16] See Records of Employment, at GD 3-18, GD 3-27, GD 3-29, and GD 3-31.

Conclusion

[47] 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