Citation: *KK v Canada Employment Insurance Commission*, 2025 SST 17

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	K. K.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated November 25, 2024 (GE-24-3491)

Tribunal member:	Melanie Petrunia
Decision date:	January 8, 2025
File number:	AD-24-853

Decision

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

Overview

[2] The Applicant, K. K. (Claimant), applied for employment insurance (EI) regular benefits on May 15, 2024, but asked that the application be treated as though it was made earlier. The Respondent, the Canada Employment Insurance Commission (Commission) refused the request. It decided that Claimant did not qualify for benefits on the earlier date because he did not have enough insurable hours in his qualifying period.

[3] The Claimant appealed the Commission's decision to the Tribunal's General Division and his appeal was dismissed. The General Division found that the Claimant hadn't shown that he worked enough hours to qualify for EI benefits.

[4] The Claimant now wants to appeal the General Division decision to the Tribunal's Appeal Division. However, he needs permission for his appeal to move forward. The Claimant argues that the General Division made an important error of fact in its decision.

[5] I have to decide whether there is some reviewable error of the General Division on which the appeal might succeed. I am refusing leave to appeal because the Claimant's appeal has no reasonable chance of success.

Preliminary matters

– **New evidence**

[6] The Claimant provided copies of emails with his application for leave to appeal in support of his claim that he worked more hours than his employer reported on his

Record of Employment (ROE).[1] These emails do not appear to have been in evidence before the General Division.

[7] I am not able to consider new evidence at the Appeal Division. There are a few exemptions to this rule, but none apply here.[2] The courts have consistently said that the Appeal Division does not accept new evidence. An appeal is not a redo based on new evidence, but a review of the General Division decision based on the evidence it had before it.[3]

[8] I have not considered the documents included with the application for leave to appeal.

Issue

[9] Does the Claimant raise any reviewable errors of the General Division upon which the appeal might succeed?

I am not giving the Claimant permission to appeal

[10] The legal test that the Claimant needs to meet on an application for leave to appeal is a low one: Is there any arguable ground on which the appeal might succeed?[4]

[11] To decide this question, I focused on whether the General Division could have made one or more of the relevant errors (or grounds of appeal) listed in the *Department of Employment and Social Development Act* (DESD Act).[5]

[12] An appeal is not a rehearing of the original claim. Instead, I must decide whether the General Division:

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[1] AD1-10 to AD1-12
[2] Although the context is somewhat different, the Appeal Division normally applies the exceptions to considering new evidence that the Federal Court of Appeal described in *Sharma* v *Canada (Attorney General*), 2018 FCA 48 at paragraph 8.
[3] See *Gittens v. Canada (Attorney General),* 2019 FCA 256 at para 13.
[4] This legal test is described in cases like *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12 and *Ingram v Canada (Attorney General)*, 2017 FC 259 at para 16.
[5] DESD Act, s 58(2).

a) failed to provide a fair process;

b) failed to decide an issue that it should have, or decided an issue that it should not have;

c) based its decision on an important factual error;[6] or

d) made an error in law.[7]

[13] Before the Claimant can move on to the next stage of the appeal, I have to be satisfied that there is a reasonable chance of success based on one or more of these grounds of appeal. A reasonable chance of success means that the Claimant could argue his case and possibly win. I should also be aware of other possible grounds of appeal not precisely identified by the Claimant.[8]

There is no arguable case that the General Division erred

[14] The General Division reviewed the law and what a claimant must show in order to have a claim antedated.[9] The reason that the Commission had denied the Claimant's request was because he did not have enough insurable hours to qualify for benefits on the earlier date.

[15] The General Division found that the Claimant needed 630 insurable hours in order to qualify for benefits based on the rate of unemployment in his region.[10] It then looked at the Claimant's qualifying period, based on the date he wanted his benefits to start. It found that the qualifying period was from April 16, 2023, to April 13, 2024.[11]

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[6] The language of section 58(1)(c) actually says that the General Division will have erred if it bases its decision on a finding of fact that it makes in a perverse or capricious manner or without regard for the material before it. The Federal Court has defined perverse as "willfully going contrary to the evidence" and defined capricious as "marked or guided by caprice; given to changes of interest or attitude according to whim or fancies; not guided by steady judgment or intent" *Rahi v Canada (Minister of Citizenship and Immigration)* 2012 FC 319.
[7] This paraphrases the grounds of appeal.
[8] *Karadeolian v Canada (Attorney General)*, 2016 FC 615; *Joseph v Canada (Attorney General)*, 2017 FC 391.
[9] General Division decision at para 8.
[10] General Division decision at paras 13 to 16.
[11] General Division decision at para 26.

[16] During his qualifying period, the Claimant worked in insurable employment in Canada until August 11, 2023, then he worked for his employer's American division until he was let go on April 10, 2024. He did not have any insurable hours from the employment outside Canada.[12]

[17] The Claimant's ROE said that he worked 595 insurable hours. The Claimant disagrees with this number. The Commission asked the Canada Revenue Agency for a ruling on the number of insurable hours. The CRA issued a ruling saying that the Claimant worked 595 hours in his qualifying period.[13]

[18] At the General Division, the Claimant argued that he worked more hours than his employer had reported. He was a salaried employee, paid for 35 hours per week but he said that he worked much more. The General Division considered the Claimant's arguments but found that it was bound by the ruling issued by the CRA.[14] The Claimant did not have enough insurable hours to qualify for benefits.

– **No arguable case that the General Division made a factual error**

[19] The Claimant says that the General Division based its decision on an important factual error. He argues that the General Division failed to discover the truth about the hours he worked due to misleading information from his employer. He says that it did not fully consider the evidence he is now presenting about the hours he worked.[15]

[20] There is no arguable case that the General Division based its decision on a factual error. It explained that the CRA has jurisdiction to determine a claimant's insurable hours and it was bound by the ruling made by CRA. The General Division also cannot have failed to consider evidence that was not provided to it, such as the emails that the Claimant is now relying on. I note that emails are from the period when the Claimant was working outside Canada.

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[12] General Division decision at paras 29 to 33.
[13] General Division decision at para 28.
[14] General Division decision at para 34.
[15] AD1-8

[21] I find that the Claimant's arguments have no reasonable chance of success. He is restating the same argument that he made at the General Division. The General Division considered this position and found that the Claimant did not have enough insurable hours to qualify for benefits. It explained that it must apply the law, even though it is sympathetic to the Claimant's circumstances.

[22] There is no arguable case that the General Division erred. Aside from the Claimant's arguments, I have also considered the other grounds of appeal. The Claimant has not pointed to any errors of jurisdiction, and I see no evidence of such errors. There is no arguable case that the General Division failed to follow procedural fairness or erred in law.

[23] The Claimant has not identified any errors of the General Division upon which the appeal might succeed. As a result, I am refusing leave to appeal.

Conclusion

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

Melanie Petrunia
Member, Appeal Division