



Citation: *AE v Canada Employment Insurance Commission*, 2025 SST 99

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 January 10, 2025
(GE-24-3871)

Tribunal member: Melanie Petrunia

Decision date: February 10, 2025

File number: AD-25-28

Decision

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

Overview

[2] The Applicant, A. E. (Claimant), applied for and received Employment Insurance (EI) regular benefits in August 2023. He returned to work but was laid off again in May 2024. He received EI benefits until his benefit period ended and then applied for two more weeks of benefits starting September 15, 2024.

[3] The Respondent, the Canada Employment Insurance Commission (Commission), only paid the Claimant one week of benefits on his second claim. It said that the Claimant had to serve a one-week waiting period.

[4] The Claimant appealed the Commission's decision to the Tribunal's General Division. He argued that he had not used all of the available weeks on his first claim and should not have to serve another waiting period for the two additional weeks. The General Division dismissed the Claimant's appeal.

[5] 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.

[6] 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.

Issue

[7] 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

[8] 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?¹

[9] 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).²

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

- 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;³ or
- d) made an error in law.⁴

[11] 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.⁵

¹ 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.

² DESD Act, s 58(2).

³ 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.

⁴ This paraphrases the grounds of appeal.

⁵ *Karadeolian v Canada (Attorney General)*, 2016 FC 615; *Joseph v Canada (Attorney General)*, 2017 FC 391.

There is no arguable case that the General Division erred

[12] The General Division reviewed the law and the requirement to serve a one-week waiting period. It considered the exceptions set out in the legislation but found none of these applied to the Claimant.⁶ It found that the Claimant was not entitled to be paid benefits for the first week of his claim when the waiting period was being served.⁷

[13] The Claimant says that the General Division based this decision on an important factual error. He argues that the benefits in September 2024 were a continuation of his claim in August 2023 because he had not used all of the weeks of benefits available to him on that claim. Because the September 2024 claim was not a new claim, he should not have been required to serve another one-week waiting period.⁸

[14] The Claimant argues that the General Division failed to take this position into consideration which led to an incorrect determination. I find that there is no arguable case that the General Division based its decision on a factual error.

[15] The General Division noted in its decision that the only issue before it was whether the Claimant was required to serve a one-week waiting period on his claim for benefits made September 2024.⁹ It acknowledged the Claimant's position that he should not have to serve another one week waiting period because he had already done so in August 2023. The General Division found that it did not have the power to change the law.¹⁰

[16] In the Claimant's Notice of Appeal to the General Division, he explained that he received benefits under the claim he made in August 2023 until they expired in September 2024. He then reapplied for benefits in September 2024, as he was still unemployed. He then was employed again in October 2024. He explained that he felt the one-week waiting period should not apply for three reasons:

⁶ General Division decision at para 8.

⁷ General Division decision at para 11.

⁸ AD1-3

⁹ General Division decision at para 12.

¹⁰ General Division decision at para 11.

- a) Financial hardship;
- b) Previous contributions to the EI system; and
- c) The timing of his second application for benefits.¹¹

[17] The issue of the length of the Claimant's benefit period for the claim starting August 2023 was not before the General Division and the Commission had not made a reconsideration decision on that issue. The Claimant made a new application for benefits in September 2024 and was required to serve a one-week waiting period.

[18] I find that the Claimant's arguments have no reasonable chance of success. The General Division considered the Claimant's position and relevant sections of the legislation. It explained that it must apply the law, even though it is sympathetic to the Claimant's circumstances.

[19] 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.

[20] 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

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

Melanie Petrunia
Member, Appeal Division

¹¹ GD2-5