Federal Court Cour fédérale

Date: 20250924

Docket: T-701-25

Citation: 2025 FC 1565

Ottawa, Ontario, September 24, 2025

PRESENT: The Honourable Madam Justice Turley

BETWEEN:

VOLODYMYR HRABOVSKYY

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, a self-represented litigant, seeks judicial review of a decision of the Social Security Tribunal's Appeal Division refusing him leave to appeal a decision of the Tribunal's General Division. The General Division upheld the Employment Insurance Commission's [Commission] decision that the Applicant did not qualify for employment insurance [EI] benefits.

[2] The Applicant argues that the General and Appeal Divisions erred in law by failing to include the one-month pay in lieu of notice that he received on the termination of his employment with Health Canada in determining his qualifying period and his insurable hours under the *Employment Insurance Act*, SC 1996, c 23 [*Act*], and the *Employment Insurance Regulations*, SOR/96-332 [*Regulations*]. I do not agree.

[3] The Appeal Division reasonably concluded that the Applicant's appeal had no reasonable chance of success on either ground, pursuant to subsection 58(2) of the *Department of Employment and Social Development Act*, SC 2005, c 34 [*DESDA*]. First, the *Regulations* make clear that any earnings paid or payable because of a termination of employment are not included in calculating a claimant's benefit period, and, in turn, their qualifying period under the *Act*. Further, the Applicant did not meet the statutory criteria for extending his qualifying period.

[4] Second, the Minister of National Revenue [MNR] has the exclusive jurisdiction to determine insurable hours under the *Act*. Here, the Commission obtained a Canada Revenue Agency [CRA] ruling on the Applicant's insurable hours with Health Canada. In accordance with the *Act*, such rulings may be appealed to the MNR, and then to the Tax Court of Canada. The Applicant did not do so. The Appeal Division properly held that the General Division was bound by the CRA's ruling.

[5] For these reasons, the application for judicial review is dismissed.

II. Background

A. *The Applicant's application for EI benefits*

[6] During the 2023 year, the Applicant had two employers. From January to March 2023, the Applicant worked for Air Canada and accumulated 328 insurable hours, which are not in dispute. The Applicant's second employer was Health Canada where he worked from May 23, 2023, until July 11, 2023. The Applicant was terminated from this position during his probationary period, and he was given one month's pay in lieu of notice in accordance with subsection 62(2) of the *Public Service Employment Act*, SC 2003, c 22, ss 12, 13 [*PSEA*]: Letter dated July 11, 2023, Respondent's Record at 227.

[7] After being terminated from Health Canada, the Applicant applied for EI benefits. The Commission determined his qualifying period was July 18, 2022, to July 15, 2023. To qualify for benefits, the Applicant required 700 hours of insurable employment because he worked and resided in Montreal. However, the Commission determined that the Applicant only had a total of 568 insurable hours in the qualifying period — 328 hours from Air Canada and 240 hours from Health Canada. The Commission thus denied his application: Letter dated January 22, 2024, Respondent's Record at 178.

[8] The Applicant sought reconsideration of the Commission's decision. The Commission confirmed that he did not have enough insurable hours to qualify. However, they determined that the qualifying period was July 17, 2022, to July 15, 2023, and that he had 598 hours of insurable hours in total: Letter dated March 5, 2024, Respondent's Record at 203. The additional 30 hours

of insurable employment were the last four days the Applicant had worked with Health Canada: Commission's Written Representations to the Social Security Tribunal dated April 12, 2024, Respondent's Record at 122–123.

B. *The General Division decision*

[9] The Applicant appealed the Commission's reconsideration decision to the General Division. He argued that his qualifying period should be from August 11, 2022, to August 11, 2023, because it should end one month after his last day of work since he was given one-month pay in lieu of notice: Social Security Tribunal of Canada, General Division – Employment Insurance Section Decision dated July 2, 2024 at para 18 [General Division Decision], Respondent's Record at 61. Further, based on the one-month of pay, the Applicant asserted that he had an additional 165 insurable hours, for a total of 763 hours of insurable employment: General Division Decision at paras 6, 23, Respondent's Record at 59, 62.

[10] In accordance with section 53 of the *Social Security Tribunal Rules of Procedure*, SOR/2002-256, the General Division requested that the Commission obtain a CRA ruling on the Applicant's insurable hours with Health Canada during the qualifying period, pursuant to subsection 90(1) of the *Act*: Letter dated May 29, 2024, Respondent's Record at 93. The Commission noted in their request that the Applicant claimed that "certain insurable hours, according to his termination notice were not reported on the [Record of Employment]": Service Canada Request for Insurability Ruling dated May 30, 2024, Respondent's Record at 78. In response, a CRA officer advised that the Applicant had 270 insurable hours: Letter dated June 12, 2024, Respondent's Record at 79–80.

[11] The General Division dismissed the Applicant's appeal. After reviewing subsections 8(2) and 10(1) of the *Act* and subsection 14(1) of the *Regulations*, the General Division concluded that the Commission had correctly determined the Applicant's benefit period as starting on July 16, 2023, and the qualifying period as July 17, 2022, to July 15, 2023: General Division Decision at paras 15–30, Respondent's Record at 60–63. Further, the General Division found that, based on the CRA ruling, the Applicant did not have sufficient insurable hours to qualify for EI benefits: General Division Decision at paras 31–39, Respondent's Record at 63–64.

C. *The Appeal Division decision*

[12] The Applicant sought leave to appeal the General Division's decision to the Appeal Division. He argued that the General Division erred in law in failing to count the one-month notice period in the calculation of insurable hours. The Applicant relied on provisions of the *Alberta Human Rights Act*, Quebec's *Charter of Human Rights and Freedoms*, the *International Covenant on Economic, Social, and Cultural Rights*, Quebec's *Act Respecting Labour Standards*, the *Civil Code of Québec*, and the *Federal Public Sector Labour Relations Act*: Applicant's Leave to Appeal Submissions, Respondent's Record at 40–44.

[13] The Appeal Division denied leave to appeal, concluding that the Applicant's appeal had no reasonable chance of success. They found that the General Division used the correct sections of the *Act* and the *Regulations* to determine the Applicant's qualifying period: Social Security Tribunal of Canada, Appeal Division – Leave to Appeal Decision dated July 29, 2024 at para 17 [Appeal Division Decision], Respondent's Record at 17. Further, the Appeal Division held that

the General Division correctly found that the CRA ruling on insurable hours was binding: Appeal Division Decision at para 19, Respondent's Record at 17.

[14] Finally, because the Applicant was self-represented, the Appeal Division "looked beyond" the arguments he had made to determine whether there was an arguable case that the General Division made other errors. They concluded that the General Division had identified and decided the legal issues they had to decide and that there was no procedural unfairness in the decision-making process: Appeal Division Decision at paras 22–24, Respondent's Record at 17–18.

III. Issues and Standard of Review

[15] As a preliminary matter, the Respondent raised the issue of the properly named respondent. As I said at the hearing, I agree that, in accordance with Rule 303(2) of the *Federal Courts Rules*, SOR/98-106, the proper respondent is the Attorney General of Canada. The style of cause is therefore amended to name the Attorney General of Canada as the respondent, rather than Service Canada.

[16] The Applicant argues that the Appeal Division erred in denying leave to appeal on the issues of his qualifying period and his insurable hours. It is well established that the standard of reasonableness applies to the merits of Appeal Division decisions refusing leave: *Cecchetto v Canada (Attorney General)*, 2024 FCA 102 at para 4 [*Cecchetto*]; *Kuk v Canada (Attorney General)*, 2024 FCA 74 at para 5; *Bhamra v Canada (Attorney General)*, 2023 FCA 121 at para 3; *Uvaliyev v Canada (Attorney General)*, 2021 FCA 222 at para 7.

[17] A reasonable decision is "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker": *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85 [*Vavilov*]; *Mason v Canada (Citizenship and Immigration)*, 2023 SCC 21 at para 8 [*Mason*]. A decision should only be set aside if there are "sufficiently serious shortcomings" such that it does not exhibit the requisite attributes of "justification, intelligibility and transparency": *Vavilov* at para 100; *Mason* at paras 59–61.

IV. Analysis

[18] The Appeal Division can only grant leave to appeal if the proposed appeal has a reasonable chance of success on at least one of the grounds listed in subsection 58(1) of the *DESDA*: *Cecchetto* at para 5. These grounds are: (a) failure to observe a principle of natural justice or otherwise acting beyond or refusing to exercise its jurisdiction; (b) an error of law; or (c) an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it.

[19] A "reasonable chance of success" has been interpreted as "having some arguable ground upon which the proposed appeal might succeed": *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12; see also: *Fancy v Canada (Attorney General)*, 2010 FCA 63 at paras 2–3; *Gloglo v Canada (Attorney General)*, 2024 FC 1923 at para 35 [*Gloglo*]; *Dubeau v Canada (Attorney General)*, 2019 FC 725 at para 28.

[20] For the reasons set out below, the Appeal Division's decision denying leave to appeal is reasonable with respect to the Applicant's qualifying period and his insurable hours. On both

issues, the Appeal Division's reasoning is justified given the relevant legal and factual constraints: *Vavilov* at para 99.

A. *The Applicant's qualifying period*

[21] The Appeal Division reasonably determined that the General Division did not make a legal error when they decided that the Applicant's qualifying period was July 17, 2022, to July 15, 2023. This determination is consistent with the governing legislation and the jurisprudence.

[22] To qualify for benefits, a claimant must establish an interruption of earnings from employment, and the requisite number of insurable hours during the qualifying period: *Act*, s 7(2). The qualifying period is the 52-week period immediately before the beginning of the benefit period: *Act*, s 8(1).

[23] A claimant's benefit period is determined in accordance with subsection 10(1) of the *Act*:

Beginning of the benefit period	**Début de la période de prestations**
10 (1) A benefit period begins on the later of	**10 (1)** La période de prestations débute, selon le cas :
(a) the Sunday of the week in which the interruption of earnings occurs, and	**a)** le dimanche de la semaine au cours de laquelle survient l'arrêt de rémunération;
(b) the Sunday of the week in which the initial claim for benefits is made.	**b)** le dimanche de la semaine au cours de laquelle est formulée la demande initiale de prestations, si cette semaine est postérieure à celle de l'arrêt de rémunération.

[Emphasis added]

[24] Thus, deciding when a claimant's interruption of earnings occurred is a key consideration in determining the start of a claimant's benefit period, and, in turn, their qualifying period. Subsection 14(1) of the *Regulations* defines when an interruption of earnings occurs, for the purposes of determining when a claimant's benefit period begins:

Interruption of Earnings	**Arrêt de rémunération**
14 (1) Subject to subsections (2) to (7), an interruption of earnings occurs where, following a period of employment with an employer, an insured person is laid off or separated from that employment and has a period of seven or more consecutive days during which no work is performed for that employer and in respect of which no earnings that arise from that employment, other than earnings described in subsection 36(13), are payable or allocated.	**14 (1)** Sous réserve des paragraphes (2) à (7), un arrêt de rémunération se produit lorsque, après une période d'emploi, l'assuré est licencié ou cesse d'être au service de son employeur et se trouve à ne pas travailler pour cet employeur durant une période d'au moins sept jours consécutifs à l'égard de laquelle aucune rémunération provenant de cet emploi, autre que celle visée au paragraphe 36(13), ne lui est payable ni attribuée.

[Emphasis added]

[25] The Applicant was terminated from his employment on July 11, 2023. Relying on subsection 10(1) of the *Act* and subsection 14(1) of the *Regulations*, the General Division held that the Applicant's benefit period began on July 16, 2023, as his interruption in earnings occurred in that week: General Division Decision at paras 25–29, Respondent's Record at 62–63. On this basis, the General Division determined that the Applicant's qualifying period was the prior 52-week period, that is July 17, 2022, to July 15, 2023, as stipulated by subsection 8(1) of the *Act*.

[26] Furthermore, the General Division considered whether the Applicant's qualifying period could be extended under subsection 8(2) of the *Act*. That provision stipulates the limited circumstances in which the Commission may extend a claimant's qualifying period. This includes where a claimant is ill, injured, quarantined, pregnant, jailed, receiving assistance under an employment support measure, or receiving payments under a provincial law because the individual ceased to work because it would result in danger to that individual, their unborn child or a child they are breastfeeding. However, as the General Division noted, the Applicant did not meet any of these criteria: General Division Decision at paras 20–22, Respondent's Record at 61–62.

[27] The Applicant argues that he did not have an interruption in his earnings in July 2023 when he was terminated as he received one-month pay in lieu of notice. On that basis, he says that his benefit period should have only started on August 12, 2023, when that one-month period ended. Accordingly, the Applicant states that his qualifying period should have been August 11, 2022, to August 11, 2023.

[28] The Applicant's position is, however, wholly inconsistent with subsections 35(6) and 36(9) of the *Regulations*:

35 (6) Notwithstanding subsection (2), the earnings referred to in subsection 36(9) and allowances that would not be deducted from benefits by virtue of subsection 16(1) are not earnings to be taken into account for the purposes of section 14.	**35 (6)** Malgré le paragraphe (2), la rémunération visée au paragraphe 36(9) et les allocations qui ne seraient pas déduites des prestations en raison du paragraphe 16(1) ne sont pas comptées pour l'application de l'article 14.

[Emphasis added]

36 (9) Subject to subsections (10) to (11), all earnings paid or payable to a claimant by reason of a lay-off or separation from an employment shall, regardless of the period in respect of which the earnings are purported to be paid or payable, be allocated to a number of weeks that begins with the week of the lay-off or separation in such a manner that the total earnings of the claimant from that employment are, in each consecutive week except the last, equal to the claimant's normal weekly earnings from that employment.	**36 (9)** Sous réserve des paragraphes (10) à (11), toute rémunération payée ou à payer au prestataire en raison de son licenciement ou de la cessation de son emploi est, abstraction faite de la période pour laquelle elle est présentée comme étant payée ou à payer, répartie sur un nombre de semaines qui commence par la semaine du licenciement ou de la cessation d'emploi, de sorte que la rémunération totale tirée par lui de cet emploi dans chaque semaine consécutive, sauf la dernière, soit égale à sa rémunération hebdomadaire normale provenant de cet emploi.

[Emphasis added]

[29] In concert, subsections 35(6) and 36(9) of the *Regulations* make clear that any earnings paid because of a termination of employment are not included in earnings for the purposes of determining when a claimant's interruption of earnings occurred under subsection 14(1) of the *Regulations*: *Canada (Attorney General) v Bacile*, 2023 FCA 161 at paras 10–11. In this case, the Applicant received one-month pay in lieu of notice, in accordance with subsection 62(2) of the *PSEA*, because of his termination of employment.

[30] Neither the General Division nor the Appeal Division referred to subsections 35(6) and 36(9) of the *Regulations* in their decisions. As set out above, a complete statutory interpretation analysis, in this case, requires consideration of these provisions. However, in the circumstances, the failure to refer to these provisions is not fatal and does not undermine the Appeal Division's

decision denying leave to appeal: *Vavilov* at para 91; *Cascade Aerospace Inc v Unifor*, 2024 FCA 187 at para 8. It does not cause the Court "to lose confidence in the outcome": *Vavilov* at para 122. The ultimate outcome — the denial of leave to appeal — is supported by the governing legislation and jurisprudence.

[31] Finally, the Applicant's reliance on subsection 11(2) of the *Act* is misplaced. That provision provides that a week during which a claimant's contract of service continues, and where they receive their regular pay for that week, is not a week of unemployment, even if they performed no work. Here, the Applicant's employment did not continue as he was terminated effective July 11, 2023.

[32] Based on the relevant provisions of the *Act* and the *Regulations*, the Appeal Division did not err in concluding that the Applicant's appeal regarding the determination of his qualifying period had no reasonable chance of success.

B. *The Applicant's insurable hours*

[33] In my view, the foregoing analysis is sufficient to dispose of this application. While the Applicant also takes issue with the Appeal Division's determination concerning his insurable hours, as I understand it, his argument is premised on the qualifying period starting one month after he was terminated. The Applicant does not dispute that 700 hours of insurable employment were required in the qualifying period to be eligible for EI benefits. I have nonetheless considered the Applicant's arguments about insurable hours.

[34] The Appeal Division determined that the Applicant failed to demonstrate an arguable case that the General Division erred in finding that he only had 598 insurable hours. The Applicant does not dispute that he had 328 insurable hours with Air Canada. He argues, however, that he had more than 270 insurable hours with Health Canada. Based on the one-month pay in lieu of notice, the Applicant says that he had an additional 165 insurable hours with Health Canada, for a total of 763 insurable hours.

[35] Pursuant to subsection 90(1)(d) of the *Act*, the General Division asked the Commission to obtain a CRA ruling on the Applicant's insurable hours. According to the CRA ruling, the Applicant had 270 hours of insurable employment with Health Canada: Letter dated June 12, 2024, Respondent's Record at 79–80.

[36] The Appeal Division did not err in finding that the General Division correctly determined that the CRA ruling was binding. This conclusion is supported by the legislation and the jurisprudence. In accordance with subsection 90(1) of the *Act* and subsection 64(3) of the *DESDA*, the MNR has exclusive jurisdiction to make employment insurability determinations: *Chen v Canada (Attorney General)*, 2025 FCA 18 at para 7 [*Chen*]; *Canada (Attorney General) v. Romano*, 2008 FCA 117 at paras 7–9; *Gloglo* at paras 30, 40–42.

[37] If the Applicant disputed the CRA's ruling on his insurable hours, he had recourse. First by appealing the ruling to the MNR under section 91 of the *Act*, and then to the Tax Court of Canada under subsection 103(1) of the *Act*: *Chen* at para 7; *Gloglo* at para 31. The CRA's letter advised the Applicant that he had 90 days to appeal the ruling: Letter dated June 12, 2024,

Respondent's Record at 79–80. Notably, the 90-day appeal period did not expire until well after the General and Appeal Divisions had already issued their decisions.

[38] The Applicant argues that this is an unfair and unduly onerous process. I appreciate the Applicant's frustration in having to pursue different avenues of recourse with respect to the determination of his qualifying period and the determination of his insurable hours under the *Act*. However, this is the way Parliament legislated, and the Appeal Division properly held that the General Division is bound by the CRA's ruling.

C. *Other legislation*

[39] The Applicant relies on "complementary legislation" to argue that the General and Appeal Divisions erred in law in determining that he did not qualify for EI benefits: Applicant's Memorandum at paras 16–26. This includes: the *Alberta Human Rights Act*, Quebec's *Charter of Human Rights and Freedoms*, the *International Covenant on Economic, Social, and Cultural Rights*, Quebec's *Act Respecting Labour Standards*, the *Civil Code of Québec*, and the *Federal Public Sector Labour Relations Act*.

[40] It is, however, the *Act* and the *Regulations* that govern the Applicant's eligibility for EI benefits. His reliance on this other legislation is misplaced. The Appeal Division reasonably concluded that "the General Division had no legal power" to consider the other legislation: Appeal Division Decision at para 14, Respondent's Record at 16.

[41] Furthermore, the Applicant's argument of discrimination based on source of income differentiation is similarly without merit: Applicant's Memorandum at para 17. Neither the *Alberta Human Rights Act*, nor Quebec's *Charter of Human Rights and Freedoms* applies.

V. Conclusion

[42] The Applicant has failed to establish that the Appeal Division made any reviewable errors in denying him leave to appeal the General Division's decision. The Respondent is not seeking their costs, and I agree that none should be payable.

JUDGMENT in T-701-25

THIS COURT'S JUDGMENT is that:

1. The style of cause is amended to name the Attorney General of Canada as the correct respondent.
2. The application for judicial review is dismissed.
3. There are no costs.

"Anne M. Turley"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-701-25
STYLE OF CAUSE:	VOLODYMYR HRABOVSKYY v THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	BY VIDEOCONFERENCE
DATE OF HEARING:	SEPTEMBER 18, 2025
JUDGMENT AND REASONS:	TURLEY J.
DATED:	SEPTEMBER 24, 2025

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