

Federal Court of Appeal



Cour d'appel fédérale

Date: 20250122

Docket: A-321-23

Citation: 2025 FCA 18

**CORAM: RENNIE J.A.
BIRINGER J.A.
PAMEL J.A.**

BETWEEN:

WEI CHEN

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Toronto, Ontario, on January 22, 2025.
Judgment delivered from the Bench at Toronto, Ontario, on January 22, 2025.

REASONS FOR JUDGMENT OF THE COURT BY:

RENNIE J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on January 22, 2025).

RENNIE J.A.

[1] The appellant appeals a decision of the Federal Court (*Chen v. Canada (Attorney General)*, 2023 FC 1287, per O'Reilly J.) dismissing his application for judicial review of a decision of the Social Security Tribunal (Tribunal). In that decision, the Tribunal dismissed the appellant's request for leave to appeal a decision of the General Division, which determined it

had no jurisdiction to deviate from the Canada Revenue Agency's (CRA) ruling that Mr. Chen was not eligible for employment insurance and benefits.

[2] The facts and proceedings leading up to the appellant's application for judicial review are fully set out in the decision of O'Reilly J. It is sufficient, for the purpose of this appeal, to note that during the course of the proceedings before the General Division, the Tribunal member asked the Canadian Employment Insurance Commission (Commission) to seek a ruling from the CRA on the question of whether the appellant was an employee with insurable earnings. The CRA found that the appellant was neither an employee nor self-employed within the meaning of subsection 152.01(1) of the *Employment Insurance Act*, S.C. 1996, c. 23 (EIA). On the basis of that ruling under section 90 of the EIA, the General Division dismissed the appeal of the Commission's refusal.

[3] On appeal, the Appeal Division concluded that Mr. Chen had not received a fair hearing and remitted the matter back to the General Division for reconsideration.

[4] On reconsideration, the General Division held that it was bound by the CRA's decision on whether Mr. Chen had insurable employment. Citing *Attorney General of Canada v. Romano* 2008 FCA 117, the General Division noted that Mr. Chen's only recourse was to appeal the CRA's insurability decision to the CRA. Mr. Chen did not appeal.

[5] Mr. Chen sought leave to appeal the General Division's decision. The Appeal Division denied this request on the basis that Mr. Chen's appeal had no chance of success.

[6] The Federal Court concluded that the Appeal Division's decision to dismiss the application for leave to appeal was reasonable and dismissed the application for judicial review. We agree with the analysis of O'Reilly J. I would dismiss this appeal for substantially the same reasons given by the Federal Court judge.

[7] The essence of the appellant's appeal is that the General Division incorrectly concluded that it had jurisdiction to request that the Commission seek a ruling from the CRA. He argued that the Commission could do so only on its own initiative, not in response to a request from the General Division. However, as the Federal Court judge noted, there are no restrictions on when or how a CRA ruling is sought, and the Commission can ask for a ruling "at any time" (*Chen*, at para. 13 citing the EIA, ss. 90(1-2), 90.1). Only the CRA can determine a claimant's hours of insurable employment under subsection 90(1) of the EIA. Similarly, subsection 64(3) of the *Department of Employment and Social Development Act*, S.C. 2005, c. 23 provides that all questions of employment insurability arising in an application or appeal before the Tribunal must be resolved by an authorized CRA officer. Insurability rulings may be appealed to the Minister of National Revenue (Minister), and subsequently to the Tax Court of Canada (EIA, ss. 91, 103(1)).

[8] The Federal Court judge found that the Appeal Division considered the statutory framework within which it exercised its jurisdiction, the limitations on when leave to appeal a decision of the General Division may be granted, and the Minister's exclusive jurisdiction to determine insurable employment hours. The Federal Court judge also hold that the fact that both

the General and Appeal Divisions relied on the CRA's decision, as they were required to do, does not indicate a lack of impartiality or independence. We agree.

[9] The appeal therefore will be dismissed with costs.

“Donald J. Rennie”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-321-23
STYLE OF CAUSE:	WEI CHEN v. ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	JANUARY 22, 2025
REASONS FOR JUDGMENT OF THE COURT BY:	RENNIE J.A. BIRINGER J.A. PAMEL J.A.
DELIVERED FROM THE BENCH BY:	RENNIE J.A.

APPEARANCES:

Wei Chen	APPELLANT (ON HIS OWN BEHALF)
Sandra Doucette	FOR THE RESPONDENT ATTORNEY GENERAL OF CANADA

SOLICITORS OF RECORD:

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