



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *W. G. v. Canada Employment Insurance Commission*, 2017 SSTADEI 156

Tribunal File Number: AD-17-290

BETWEEN:

W. G.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: April 13, 2017

REASONS AND DECISION

DECISION

[1] The Tribunal grants leave to appeal to the Appeal Division of the Social Security Tribunal (Tribunal).

INTRODUCTION

[2] On February 21, 2017, the General Division of the Tribunal determined that a disentitlement was to be imposed pursuant to paragraph 18(a) of the *Employment Insurance Act* (Act) due to the Applicant's failure to prove her availability for work.

[3] The Applicant requested leave to appeal to the Appeal Division on April 3, 2017, after receiving the General Division decision on March 6, 2017.

ISSUE

[4] The Tribunal must decide whether the appeal has a reasonable chance of success.

THE LAW

[5] According to subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act* (DESD Act), "An appeal to the Appeal Division may only be brought if leave to appeal is granted" and "The Appeal Division must either grant or refuse leave to appeal."

[6] Subsection 58(2) of the DESD Act provides that "[l]eave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success."

ANALYSIS

[7] Subsection 58(1) of the DESD Act states that the only grounds of appeal are the following:

- a) The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

- b) The General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- c) The General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[8] Before leave to appeal can be granted, the Tribunal needs to be satisfied that the reasons for appeal fall within any of the above-mentioned grounds of appeal, and that at least one of the reasons has a reasonable chance of success.

[9] The Applicant submitted that the General Division had made an error in law based on the issue of her availability for work while she was taking a full-time course. She has a history of working while attending high school and university, and her job search resulted in her finding a job while she was taking a full-time course.

[10] The Applicant further submitted that the General Division had erred in law by failing to apply the correct legal test for “availability” established by jurisprudence. In *Faucher v. Canada (Employment and Immigration Commission)*, 1997 CanLII 4856 (FCA), the Federal Court of Appeal established that the legal test to prove availability within the meaning of the Act must be determined by analyzing three factors: “the desire to return to the labour market as soon as a suitable job is offered, the expression of that desire through efforts to find a suitable job and not setting personal conditions that might unduly limit the chances of returning to the labour market.”

[11] Finally, the Applicant argued that the General Division had erred when it failed to consider that the Respondent had neglected to give her a warning or a reasonable opportunity to establish her availability.

[12] After reviewing the appeal docket and the General Division’s decision, and after considering the Applicant’s arguments in support of her request for leave to appeal, the Tribunal finds that the appeal has a reasonable chance of success. The Applicant has set out

reasons that fall into the above-enumerated grounds of appeal and that could possibly lead to the overturning of the disputed decision.

CONCLUSION

[13] The Tribunal grants leave to appeal to the Appeal Division of the Tribunal.

Pierre Lafontaine
Member, Appeal Division