



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *E. G. v. Canada Employment Insurance Commission*, 2017 SSTADEI 312

Tribunal File Number: AD-17-571

BETWEEN:

E. G.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: August 28, 2017

REASONS AND DECISION

DECISION

[1] The Social Security Tribunal of Canada (Tribunal) refuses leave to appeal to the Tribunal's Appeal Division.

INTRODUCTION

[2] On June 30, 2017, the Tribunal's General Division determined that the Applicant was to be disentitled to benefits for failing to prove her availability for work pursuant to paragraph 18(1)(a) of the *Employment Insurance Act* (Act).

[3] The Applicant requested leave to appeal to the Appeal Division on August 10, 2017, after receiving the General Division's decision on July 11, 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] In regards to the application for leave to appeal, 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] After considering the evidence, including the Applicant's oral testimony, the General Division found that the Applicant was unable to meet the onus placed upon her to demonstrate her availability for work pursuant to paragraph 18(1)(a) of the Act.

[10] In her application for leave to appeal, the Applicant states that she enrolled in a two-year recreation and leisure services course at Humber College in September 2016. Her course load (Monday through Thursday classes), as well as the fact that her child was not yet eligible for the expanded range of services that would have allowed her greater flexibility with her schedule, limited her work opportunities. She did, however, apply to upwards of 45 jobs during her studies. In spite of her willingness to abandon her coursework in favour of meaningful, long-term, full-time employment, she did not receive any job offers. She hopes to soon complete her studies, which will put her at an advantage in finding full-time employment in order to help provide for her family.

[11] The Applicant, in her application for leave to appeal, is essentially asking this Tribunal to re-evaluate and reweigh the evidence that was already submitted to the General Division, which is the province of the trier of fact and not of an appeal court. It is not for the Member deciding whether to grant leave to appeal to reweigh the evidence or to explore the merits of the General Division's decision.

[12] Unfortunately for the Applicant, subsection 18(1)(a) of the Act clearly provides that a claimant is not entitled to be paid benefits for any working day in a benefit period for which the claimant **fails to prove** that, on that day, the claimant was capable of and available for work, and unable to obtain suitable employment.

[13] The Tribunal finds that the General Division correctly applied the decision of the Federal Court of Appeal in *Faucher v. Canada (Employment and Immigration Commission)*, A-56-96, to the facts of the present case.

[14] For the above-mentioned reasons and after reviewing the docket of appeal and the General Division's decision, as well as after considering the Applicant's arguments in support of her request for leave to appeal, the Tribunal finds that the appeal has no reasonable chance of success.

CONCLUSION

[15] The Tribunal refuses leave to appeal to the Appeal Division.

Pierre Lafontaine
Member, Appeal Division