



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *N. F. v. Canada Employment Insurance Commission*, 2018 SST 734

Tribunal File Number: AD-18-89

BETWEEN:

N. F.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: July 16, 2018

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, N. F. (Claimant), made an initial claim for benefits. The Canada Employment Insurance Commission (Commission) denied her regular benefits starting December 4, 2016, because she had not demonstrated her availability for work. The Claimant requested a reconsideration of that decision, but the Commission upheld its initial decision on the issue of availability. The Claimant appealed this decision to the General Division of the Tribunal.

[3] Based on the preponderance of the evidence, the General Division found that the Claimant did not have a desire to find a suitable job, she did not make reasonable efforts to find a suitable job, and she set personal limits that reduced her chances of getting back into the job market. It found that the Claimant had failed to demonstrate her availability for work, within the meaning of s. 18(1)(a) of the *Employment Insurance Act*.

[4] The Claimant now seeks leave from the Tribunal to appeal the General Division decision.

[5] In support of her application for leave to appeal, the Claimant stresses that she disagrees with the General Division's decision. She considers herself to have proven her availability for work, contrary to the General Division's findings. The Claimant argues that she has always been available to work and that she has attempted to find a suitable job but has been unsuccessful.

[6] On June 1, 2018, the Tribunal wrote to the Claimant and requested detailed grounds of appeal in support of her application for leave to appeal, in accordance with s. 58(1) of the *Department of Employment and Social Development Act* (DESDA). Unfortunately, the Claimant did not respond to the Tribunal's request.

[7] The Tribunal must decide whether there is an arguable case that the General Division made a reviewable error that may give the appeal a reasonable chance of success.

[8] The Tribunal refuses leave to appeal because the appeal does not have a reasonable chance of success based on any of the grounds of appeal raised by the Claimant.

ISSUE

[9] In her grounds of appeal, has the Claimant raised a reviewable error made by the General Division that may give the appeal a reasonable chance of success?

ANALYSIS

[10] Subsection 58(1) of the DESDA specifies the only grounds of appeal for a General Division decision. These reviewable errors are that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; erred in law in making its decision, whether or not the error appears on the face of the record; or 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.

[11] An application for leave to appeal is a preliminary step to a hearing on the merits of the case. It is an initial hurdle for the Claimant to meet, but it is lower than the one that must be met at the hearing of the appeal on the merits. At the application for leave to appeal stage, the Claimant does not have to prove her case; she must instead establish that the appeal has a reasonable chance of success. In other words, she must show that there is arguably some reviewable error based on which the appeal may succeed.

[12] The Tribunal will grant leave to appeal if it is satisfied that the appeal may have a reasonable chance of success based on at least one of the grounds of appeal raised by the Claimant.

[13] This means that the Tribunal must be in a position to determine whether there is an issue of natural justice, jurisdiction, law, or fact that may lead to the setting aside of the decision under review, in accordance with s. 58(1) of the DESDA.

Issue: In her grounds of appeal, has the Claimant raised a reviewable error made by the General Division that may give the appeal a reasonable chance of success?

[14] In support of her application for leave to appeal, the Claimant emphasizes that she disagrees with the General Division's decision. She considers herself to have proven her availability for work, contrary to the General Division's findings. The Claimant argues that she has always been available to work and that she has attempted to find a suitable job but has been unsuccessful.

[15] Unfortunately, an appeal to the Appeal Division is not an appeal in which there is a new hearing where a party can present their evidence again and hope for a favourable decision.

[16] The Tribunal notes that, despite the Tribunal's express request, the Claimant has not raised any issue of law, fact, or jurisdiction that may lead to the setting aside of the decision under review.

[17] After reviewing the appeal file, the General Division's decision, and the Applicant's arguments, the Tribunal finds that the General Division properly applied the criteria of the Federal Court of Appeal when assessing the Applicant's availability.¹ The evidence before the General Division clearly shows that the Claimant wanted to wait to return to work with her seasonal employer.

[18] The Tribunal has no choice but to conclude that the appeal has no reasonable chance of success.

¹ *Faucher*, A-56-96.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	N. F., self-represented
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