



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: A. A. v Canada Employment Insurance Commission, 2019 SST 146

Tribunal File Number: AD-19-19

BETWEEN:

A. A.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: February 19, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, A. A. (Claimant), applied for Employment Insurance benefits after being laid off for the summer from her seasonal job as a supply teacher. She took a course that required her to be in class Mondays to Thursdays in the mornings and afternoons. The Respondent, the Canada Employment Insurance Commission (Commission), denied the Claimant's application for benefits because the Claimant was prepared to work only for her seasonal and part-time employers and had not proven her availability for work. The Claimant requested a reconsideration of this decision, but the Commission maintained its initial decision. The Claimant appealed the reconsideration decision to the Tribunal's General Division.

[3] The General Division found that a disentitlement was to be imposed because the Claimant had not proven her availability for work in keeping with section 18(1)(a) of the *Employment Insurance Act*.

[4] The Claimant now seeks leave to appeal the General Division's decision to the Appeal Division.

[5] In support of her application for leave (permission) to appeal, the Claimant states that she disagrees with the General Division's conclusion that her job search was restrictive because it is the only way to get a job with school boards. She submits that finding a job with another school board would not guarantee her a full-time job. She argues that, contrary to the conclusions of the General Division, she was looking for other jobs.

[6] The Tribunal sent the Claimant a letter asking her to explain in detail her grounds of appeal. In her reply to the Tribunal, the Claimant essentially reiterated her initial position with more details.

[7] The Tribunal must decide whether there is arguably some reviewable error of the General Division on which the appeal might succeed.

[8] The Tribunal refuses leave to appeal because the Claimant's appeal has no reasonable chance of success.

ISSUE

[9] Does the Claimant's appeal have a reasonable chance success based on a reviewable error the General Division may have made?

ANALYSIS

[10] Section 58(1) of the *Department of Employment and Social Development Act* (DESD Act) specifies the only grounds of appeal of 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 had 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. It is an initial hurdle for the Claimant to meet, but it is lower than the one that must be met on the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove her case; instead, she must establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, she must show that there is arguably some reviewable error on which the appeal might succeed.

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

[13] This means that the Tribunal must be in a position to determine, in accordance with section 58(1) of the DESD Act, whether there is an issue of natural justice,

jurisdiction, law, or fact that may lead to the setting aside of the General Division decision under review.

Issue: Does the Claimant’s appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

[14] In support of her application for permission to appeal, the Claimant states that she disagrees with the General Division’s conclusion that her job search was restrictive because it is the only way to get a job with school boards. She submits that finding a job with another school board would not guarantee her a full-time job. She argues that, contrary to the conclusions of the General Division, she was looking for other jobs.

[15] The undisputed evidence before the General Division shows that the Claimant was in training from July 4, 2018, to July 19, 2018. The training hours were from 8:30 a.m. to 4:00 p.m., Monday to Thursday each week.

[16] Attending full-time studies creates a presumption that the person studying is not available for work. A claimant could disprove that presumption with evidence of “exceptional circumstances.”¹ The burden of proving the “exceptional circumstances” is on the Claimant. The General Division concluded that the Claimant had not provided enough evidence to meet her burden.

[17] Furthermore, the evidence before the General Division clearly demonstrates that the Claimant’s primary goal was her studies and that employment was secondary.

[18] In response to the simple question “If you found full time work but the job conflicted with your course/program, what would you do?” the Claimant answered she would accept the job as long as she could delay the start date to allow her to finish the course.²

[19] During an interview by the Commission, the Claimant reiterated that she would not drop her course if there were a conflict with a job offer.³

¹ *Landry v Canada (Attorney General)*, A-719-91.

² GD3-9.

³ GD3-19.

[20] The jurisprudence has clearly established that the desire to finish a course despite an employment opportunity shows non-availability.

[21] During another interview by the Commission, the Claimant stated that she was not applying for work because she had a part-time job and she had a job for the fall. She did not want a third job.⁴

[22] Therefore, the General Division did not err when it concluded from the evidence that there was not enough evidence to support a history of combining work and full-time studies and disprove the presumption of non-availability and that more weight was to be given to the statements the Claimant made before the disentitlement was placed on her claim.

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

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	A. A., self-represented
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⁴ GD3-47.