



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. V. v Canada Employment Insurance Commission*, 2019 SST 310

Tribunal File Number: AD-19-208

BETWEEN:

J. V.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: April 1, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, J. V. (Claimant), established a claim for Employment Insurance (EI) regular benefits effective September 24, 2018. He was unable to work due to illness for a period of time and received EI sickness benefits. Once the Claimant was cleared to return to work by his doctor, he requested that his EI regular benefits resume. The Respondent, the Canada Employment Insurance Commission (Commission), disentitled the Claimant from receiving EI regular benefits because he had not proven his availability to work. The Claimant requested reconsideration of the Commission's decision and the Commission upheld its original decision. The Claimant appealed to the General Division.

[3] The General Division found that the Claimant was not available for work as of July 1, 2018, as he did not meet all the elements of the *Faucher* test¹, and that he had not proven, on a balance of probabilities, that he had made reasonable and customary efforts to find suitable employment in accordance with sections 18(1)(a) and 50(8) of the *Employment Insurance Act* and sections 9.001 and 9.002 of the *Employment Insurance Regulations*.

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

[5] In support of his application for permission to appeal, the Claimant puts forward that he could not be present at the General Division hearing because he had an emergency operation. He would like to present his case to the General Division.

[6] The Tribunal must decide whether the Claimant raised some reviewable error of the General Division on which the appeal might succeed.

¹ *Faucher v Canada (Attorney General)*, A-56-96.

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

ISSUE

[8] Does the Claimant raise some reviewable error of the General Division on which the appeal might succeed?

ANALYSIS

[9] 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; it erred in law in making its decision, whether or not the error appears on the face of the record; or it 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.

[10] 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 his case but must establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, that there is arguably some reviewable error upon which the appeal might succeed.

[11] Therefore, before leave 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.

[12] This means that the Tribunal must be in a position to determine, in accordance with subsection 58(1) of the DESD Act, whether there is a question of natural justice, jurisdiction, law, or fact, the answer to which may lead to the setting aside of the General Division decision under review.

Issue: Does the Claimant raise some reviewable error of the General Division on which the appeal might succeed?

[13] In support of his application for leave to appeal, the Claimant puts forward that he could not be present at the General Division hearing because he had an emergency operation. He would like to present his case to the General Division.

[14] On January 17, 2019, the General Division proceeded with the hearing in the absence of the parties, as per section 12(1) of the *Social Security Tribunal Regulations*. It was satisfied that the Claimant had received the notice of hearing on December 13, 2018. Furthermore, the General Division personnel contacted the Claimant by telephone on January 7, 2019, to remind him of the upcoming hearing. The General Division also noted in its decision that the Claimant had not contacted the General Division to explain his absence at the hearing prior to its decision dated January 29, 2019.

[15] The Tribunal notes that the Claimant initially stated that the reason why he did not attend the General Division hearing was because of mortality in his family.² Now, he states that he did not attend the hearing because of an emergency operation.

[16] The General Division hearing was held on January 17, 2019. The medical evidence filed by the Claimant to explain his absence at the hearing does not support his claim that he could not attend the hearing. It does not demonstrate that he was not available on the date of the hearing. Furthermore, the Claimant could have called the General Division prior to the hearing to explain his situation and request an adjournment but he did not do so.

[17] The arguments of the Claimant do not demonstrate that the General Division failed to observe a principle of natural justice.

[18] In his application for leave to appeal, the Claimant has not identified any reviewable errors such as jurisdiction or any failure by the General Division to observe a principle of natural justice. He has not identified errors in law nor identified any

² Telephone conversation log, January 31, 2019.

erroneous findings of fact, which the General Division may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision.

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

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	J. V., Self-represented
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