



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *T. M. v Canada Employment Insurance Commission*, 2019 SST 696

Tribunal File Number: AD-19-451

BETWEEN:

T. M.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Jude Samson

Date of Decision: August 1, 2019

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] T. M. is the Claimant in this case. She applied for Employment Insurance (EI) regular benefits in February 2019. The Canada Employment Insurance Commission reviewed her application and refused to pay her any benefits. In particular, the Commission decided that the Claimant was unavailable for work, meaning that she was not entitled to EI benefits. At the Claimant's request, the Commission reconsidered its decision. For a second time, however, the Commission refused to pay EI benefits to the Claimant.

[3] The Claimant challenged the Commission's decision to the Tribunal's General Division but she lost. The General Division agreed with the Commission: the Claimant was not available for work and not entitled to EI benefits.

[4] The Claimant now wants to appeal the General Division decision to the Tribunal's Appeal Division. For the file to move forward, however, she needs leave (or permission) to appeal.

[5] In my view, the Claimant's appeal has no reasonable chance of success. As a result, I must refuse leave to appeal.

ANALYSIS

[6] The Tribunal follows the law and procedures set out in the *Department of Employment and Social Development Act* (DESD Act). As a result, this appeal is following a two-step process: the leave to appeal stage and the merits stage. If the appeal has no reasonable chance of success, then it cannot move on to the merits stage.¹

¹ This is described in sections 58(2) and 58(3) of the DESD Act.

[7] The legal test that the Claimant needs to meet at this stage is a low one: Is there any arguable ground on which the appeal might succeed?² To decide this question, I must focus on whether the General Division could have committed one of the three errors listed in the DESD Act.³

Does the Claimant's appeal have any reasonable chance of success?

[8] The Claimant's reasons for appealing the General Division decision do not fit well within the rules that I must follow. The Claimant seems to be hoping that someone else will reassess her case and rule in her favour. But that is something that I cannot do. Nor is it a reason for granting leave to appeal.⁴

[9] Instead, my job focuses on spotting errors that the General Division might have made. Unfortunately, the Claimant might not have fully understood the limits of my role. I say this because she has not pointed to any relevant errors that the General Division might have made.

[10] Nevertheless, I have reviewed the file and the decision under appeal. In short, the General Division set out the correct legal test: it described three things that the Claimant needed to show to establish that she was available for work. Given the Claimant's significant childcare responsibilities, however, she failed on all three parts of the test.

[11] The evidence supports the General Division's decision. In addition, my review of the file did not reveal relevant evidence that the General Division might have ignored or misinterpreted.⁵ Finally, the Claimant has not suggested that the General Division acted unfairly in any way.

[12] As a result, the Claimant's appeal has no reasonable chance of success.

² *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12.

³ Section 58(1) of the DESD Act defines the three errors (or grounds of appeal) that I am able to consider.

⁴ *Bellefeuille v Canada (Attorney General)*, 2014 FC 963 at para 31.

⁵ Federal Court decisions like *Griffin v Canada (Attorney General)*, 2016 FC 874 and *Karadeolian v Canada (Attorney General)*, 2016 FC 615 say that I should normally grant leave to appeal if the General Division might have ignored or misinterpreted relevant evidence. This is true even if there are problems with the claimant's written documents.

CONCLUSION

[13] In her written application, the Claimant mentioned benefits for raising her young granddaughter. Parental benefits under the *Employment Insurance Act* are different from the regular benefits that I discussed above. The Claimant could speak to the Commission about applying for parental benefits. Once she applies, the Commission will review her file and decide whether she is eligible for those benefits or not.

[14] I sympathize with the Claimant's circumstances. Nevertheless, I have concluded that her appeal has no reasonable chance of success. I have no choice, therefore, but to refuse leave to appeal.

Jude Samson
Member, Appeal Division

REPRESENTATIVE:	T. M., self-represented
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Relevant Legal Provisions

Department of Employment and Social Development Act

Grounds of appeal

58 (1) The only grounds of appeal are that

- (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.

Criteria

(2) Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.

Decision

(3) The Appeal Division must either grant or refuse leave to appeal.