



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation : *A. K. v Canada Employment Insurance Commission*, 2019 SST 1033

Tribunal File Number: AD-19-574

BETWEEN:

A. K.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Shu-Tai Cheng

Date of Decision: October 15, 2019

DECISION AND REASONS

DECISION

[1] Leave to appeal the decision given by the General Division of the Social Security Tribunal of Canada on July 15, 2019, is refused.

OVERVIEW

[2] The Applicant, A. K., applied for Employment Insurance benefits when he stopped working on January 7, 2019, because his work permit was expired and he was not allowed to work in Canada. Later, he obtained a visitor's permit on April 11, 2019.

[3] The Respondent, the Canada Employment Insurance Commission (Commission), found that it could not pay the Applicant benefits as of February 11, 2019, because his work permit that allowed him to work in Canada had expired on October 9, 2018. The Commission found that the Applicant was not available for work because he was in a situation that prevented him from being available.

[4] The Applicant argues that he applied to renew his work permit, but that his application was refused on January 3, 2019. In addition, he was actively looking for employment, and he could not obtain a work permit until an employer agreed to hire him.

[5] The Applicant appealed the Commission's decision. The General Division found that the Applicant's status unduly limited his chances of finding employment and that the Applicant was not available for work as of February 11, 2019.

[6] In his application for leave to appeal, the Applicant submitted that the General Division erred in law in making its decision and that it based its decision on important errors regarding the facts of the appeal file.

[7] The appeal does not have a reasonable chance of success because the Applicant has not raised any arguable case that the General Division may have made a reviewable error.

ISSUE

[8] Is there an arguable case that the General Division erred when it found that the Applicant was not available for work?

ANALYSIS

[9] An applicant must seek leave to appeal a General Division decision. The Appeal Division must either grant or refuse leave to appeal, and an appeal can proceed only if leave to appeal is granted.¹

[10] Before I can grant leave to appeal, I must decide whether the appeal has a reasonable chance of success. In other words, is there a ground of appeal on which the Applicant might succeed?²

[11] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success³ based on a reviewable error. The only reviewable errors are the following:⁴ 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 made in a perverse or capricious manner or without regard for the material before it.

Is there an arguable case that the General Division erred when it found that the Applicant was not available for work?

[12] No, there is no arguable case that the General Division erred.

¹ *Department of Employment and Social Development Act* (DESD Act), ss 56(1) and 58(3).

² *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12; *Murphy v Canada (Attorney General)*, 2016 FC 1208 at para 36; *Glover v Canada (Attorney General)*, 2017 FC 363 at para 22.

³ DESD Act, s 58(2).

⁴ DESD Act, s 58(1).

[13] A claimant is not entitled to be paid benefits for a 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.⁵

[14] The word “available” must be interpreted within the *Employment Insurance Act* (Act) and case law, not based on a claimant’s understanding of the term.

[15] To establish whether a person is available for work, the following three criteria are considered:⁶

- a) the desire to return to the labour market as soon as suitable employment is offered;
- b) the expression of that desire through efforts to find suitable employment;
- c) not setting personal conditions that might unduly limit the chances of returning to the labour market.

[16] According to the Applicant, the General Division did not consider his personal circumstances by reaching the conclusion that there were personal conditions that might have unduly limited his chances of returning to the labour market.

[17] However, on reading the General Division decision, I note that it includes the following:

[Translation]

[The Applicant] was not allowed to remain in Canada, and that condition was an obstacle to finding employment, not only because he did not hold a valid work permit, but because he was not allowed to remain in Canada under his status.⁷

The Appellant’s situation was regularized on April 5, 2019, when he received a valid visitor’s permit. On April 26, 2019, a work permit was issued to him after an employment contract was finalized with X on April 11, 2019. The work permit is valid from April 27, 2019, to

⁵ *Employment Insurance Act* (Act), s 18(1)(a).

⁶ *Faucher* (A-56-96/A-57-96 appealing CUB 30987 and CUB 30988).

⁷ General Division decision at para 11.

September 11, 2019. The Appellant did not have a visitor record from January 3, 2019, to April 5, 2019.⁸

I understand the Appellant's efforts and that a closed work permit (employer-specific) could not be issued to him until an employer agreed to hire him under those conditions. However, the Appellant's work permit was refused on January 3, 2019, and he was not allowed to remain in Canada from that point onward. He obtained a visitor record only on April 11, 2019, which granted the extension of his stay until September 11, 2019. I cannot find that the Appellant was available for work on every working day of his benefit period as of February 11, 2019.⁹

[18] Contrary to the Applicant's submission, the General Division considered the Applicant's specific circumstances.

[19] The Applicant has repeated the arguments he presented to the General Division, but he has not raised any arguable case showing that the General Division may have based its decision on a reviewable error.

[20] Furthermore, the Applicant added to his arguments in his application for leave by submitting that he had an implied status as an immigrant. However, according to the evidence on file, the Applicant's work permit was refused and he was not allowed to remain in Canada as of the relevant date. That new argument does not raise any arguable case that the General Division based its decision on a reviewable error.

[21] I have also reviewed the evidence on file. There is no indication that the General Division overlooked or misconstrued important evidence. I also find that the General Division did not fail to observe a principle of natural justice or otherwise act beyond or refuse to exercise its jurisdiction in coming to its decision. The Applicant has not raised any error of law or any erroneous finding of fact that the General Division may have made in a perverse or capricious manner or without regard for the material before it.

[22] For these reasons, I find that the appeal does not have a reasonable chance of success.

⁸ *Ibid.* at para 12.

⁹ *Ibid.* at para 14.

CONCLUSION

[23] Leave to appeal is refused.

Shu-Tai Cheng
Member, Appeal Division

REPRESENTATIVE:	A. K., self-represented
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