



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *K. Y. v Canada Employment Insurance Commission*, 2019 SST 1392

Tribunal File Number: AD-19-434

BETWEEN:

K. Y.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Janet Lew

Date of Decision: December 4, 2019

DECISION AND REASONS

DECISION

[1] The application for leave to appeal is refused.

OVERVIEW

[2] The Applicant, K. Y. (Claimant), is seeking leave to appeal the General Division's decision. Leave to appeal means that an applicant has to get permission from the Appeal Division before they can move on to the next stage of the appeal process.

[3] The General Division found that the Claimant had not proven that he was available for work from March 11, 2019 to April 26, 2019. The General Division concluded that he was disentitled to benefits for this timeframe. The Claimant argued that the General Division made a mistake.

[4] I have to be satisfied that the appeal has a reasonable chance of success before granting leave to appeal. I am not satisfied that the appeal has a reasonable chance of success and I am therefore refusing the application for leave to appeal.

BACKGROUND HISTORY

[5] The Claimant did not work for many months because he was injured. He had been in a car accident. He tried to go back to work as a painter, but he found it very hard. He still had pain and problems with both hands. His doctor recommended that he quit his job and that he look for other work. The Claimant stopped working.

[6] The Claimant applied for Employment Insurance benefits in December 2018. He began receiving benefits.

[7] In February 2019, the Respondent, the Canada Employment Insurance Commission (Commission) told the Claimant that he needed to prove that he was looking for work. If he did not show that he was looking for work, his benefits would stop.¹

[8] By March 12, 2019, the Commission decided that it would not pay the Claimant any more benefits. He had not shown that he had been looking for work and because of this, the Commission concluded that the Claimant had been unavailable for work.²

[9] The Claimant then gave a job search list to the Commission. The list showed that the Claimant had been looking for work on April 29 and May 1, 2019. However, the job search list did not show that the Claimant had been looking for work between March 11, 2019 and April 26, 2019. The Commission would not pay benefits for the timeframe between March 11, 2019 and April 26, 2019.

[10] The Claimant still felt that he should have gotten benefits between March 11, 2019 and April 26, 2019. He appealed the Commission's reconsideration decision to the General Division. The General Division dismissed his appeal. It determined that the Claimant did not show that he had been available for work from March 11, 2019 to April 26, 2019.

[11] The Claimant is now seeking leave to appeal the General Division's decision. As part of his application, he filed a job search list. The job search list covers the period from February 28, 2019 to March 6, 2019. The list shows that he applied for work at several places. The General Division did not have a copy of this list or any evidence about the Claimant's job search efforts between March 11, 2019 and April 26, 2019.

[12] The Claimant filed an application to rescind or amend the General Division's decision. The General Division dismissed his application. This now leaves me to decide whether the Claimant's appeal before me has a reasonable chance of success.

¹ See Supplementary Record of Claim, dated February 28, 2019, at GD3-16.

² See Commission's letter dated March 12, 2019, at GD3-17.

ISSUE

[13] Is there an arguable case that the General Division made any errors?

ANALYSIS

[14] Before the Claimant can move on to the next stage of his appeal, I have to be satisfied that the Claimant's reasons for appeal fall into at least one of the types of errors listed in section 58(1) of the *Department of Employment and Social Development Act* (DESDA). The types of errors are:

1. The General Division process was not fair.
2. The General Division did not decide an issue that it should have decided. Or, it decided something that it did not have the power to decide.
3. The General Division made an error of law when making its decision.
4. The General Division based its decision on an important error of fact.

[15] The appeal also has to have a reasonable chance of success. A reasonable chance of success is the same thing as an arguable case at law.³ This is a relatively low bar because claimants do not have to prove their case; they simply have to show that there is an arguable case. At the actual appeal, the bar is much higher.

[16] The Claimant has not identified any errors in the General Division's decision or identified any grounds of appeal. There is no suggestion that the General Division process was unfair, that the General Division did not decide an issue that it should have decided, or that it decided something that it did not have the power to decide. There is also no suggestion that the General Division made an error of law or an error of fact.

[17] In his application to the Appeal Division, the Claimant wrote that the General Division asked him why he did not look for work between March 26, 2019 and April 26, 2019. He claims that he was unable to explain that he had in fact looked for work but accidentally did not submit

³ This is what the Federal Court of Appeal said in *Fancy v. Canada (Attorney General)*, 2010 FCA 63.

his job search. So, he was now providing his job search list to the Appeal Division so that it could decide whether he had looked for work.

[18] Generally, the Appeal Division does not consider any new evidence that the General Division did not already have. There are exceptions to this general rule.

[19] For instance, I may accept new evidence if I find that it relates to one of the grounds of appeal under section 58(1) of the DESDA. I may also accept new evidence if it provides general background in circumstances where that information might help me understand the issues related to the appeal but does not add new evidence on the merits. I may also accept new evidence if it highlights the complete absence of evidence on a particular finding or if it shows defects that cannot be found in the evidence.

[20] None of those exceptions apply here. The Claimant's job search list does not fall into any of the categories in the list of exceptions, so I cannot accept it.

[21] Even if I could consider the job search list, it would not have helped the Claimant's case. The job search list shows that the Claimant looked for work between February 28, 2019 and March 6, 2019. It does not show that he looked for work between March 11, 2019 and April 26, 2019. This earlier timeframe was irrelevant. The Commission wrote to the Claimant on March 12, 2019. The Commission said that it would be unable to pay Employment Insurance benefits from March 11, 2019. The General Division was interested in seeing only whether he was available between March 11, 2019 and April 26, 2019.

[22] The Claimant is suggesting that the Appeal Division reevaluate and reweigh the evidence that was before the General Division, along with his job search list. But, that is not the role of the Appeal Division.

[23] I have reviewed the underlying record. I do not see that the General Division erred in law, whether or not the error appears on the record, or that it failed to properly account for any of the key evidence before it.

[24] Because there are no grounds of appeal under section 58(1) of the DESDA, I am not satisfied that the appeal has a reasonable chance of success.

CONCLUSION

[25] The application for leave to appeal is refused.

Janet Lew
Member, Appeal Division

APPLICANT:	K. Y., Self-represented
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