



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *N. C. v Canada Employment Insurance Commission*, 2020 SST 7

Tribunal File Number: AD-19-884

BETWEEN:

N. C.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: January 6, 2020

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, N. C. (Claimant), works as a school bus driver. She also works for the City of X in maintenance. On June 21, 2019, she stopped working because of a shortage of work. The Claimant applied for Employment Insurance benefits. The Employment Insurance Commission (Commission) refused to pay her benefits because the Claimant was not available for work since she was restricting her job search as a school bus driver. The Claimant requested a reconsideration, but the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[3] The General Division determined that the Claimant was not available for work under section 18(1)(a) of the *Employment Insurance Act* (EI Act), because she had not made efforts to find suitable employment and was imposing personal conditions by limiting her job search to a particular field.

[4] The Claimant now seeks leave to appeal the General Division decision. She is very disappointed with the General Division's decision. She argues that she is entitled to benefits because she has contributed to the program all her life.

[5] The Tribunal wrote to the Claimant and asked her to provide in detail her grounds of appeal based on the requirements of section 58(1) of the *Department of Employment and Social Development Act* (DESD Act). In her response to the Tribunal, the Claimant argued that she was still available for work but that no one would hire her for a month and a half. She argued that her employment is seasonal.

[6] The Tribunal must decide whether there is an arguable case that the General Division made a reviewable error based on which the appeal has a reasonable chance of success.

[7] The Tribunal refuses leave to appeal because the Claimant has not raised a ground of appeal based on which the appeal might succeed.

ISSUE

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

ANALYSIS

[9] Section 58(1) of the 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 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 of the case. 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; she must instead establish that the appeal has a reasonable chance of success. In other words, she must show that there is arguably a reviewable error based on which the appeal may succeed.

[11] The Tribunal will grant leave to appeal if it is satisfied that at least one of the Claimant's stated grounds of appeal has a reasonable chance of success.

[12] 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 decision under review.

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

[13] In support of her application for leave to appeal, the Claimant argues that she is still available for work but that no one will hire her for a month and a half. She argues that her employment is seasonal. She is very disappointed with the General Division's decision.

[14] There being no precise definition in the EI Act, the Federal Court of Appeal has held on many occasions that availability must be determined by analyzing three factors—the desire to return to the labour market as soon as a suitable job is offered, the expression of that desire through efforts to find a suitable job, and not setting personal conditions that might unduly limit the chances of returning to the labour market—and that the three factors must be considered in reaching a conclusion.¹

[15] Furthermore, availability is assessed for each working day in a benefit period in which the claimant must prove that, on that day, they were capable of and available for work and unable to obtain suitable employment.²

[16] The General Division determined that the Claimant's availability for work did not lead to concrete and sustained searches with the aim of finding employment because she had chosen to prioritize her usual employer instead of searching in a sustained manner for other full-time employment.

[17] The General Division also found that the Claimant had set personal conditions that had unduly limited her chances of returning to the labour market by wanting only to drive buses.

[18] The Claimant had to show before the General Division that she was looking for employment and available for work each working day in her benefit period and that she was incapable of obtaining suitable employment. She failed to show this.

¹ *Faucher v Canada (Employment and Immigration Commission)*, A-56-96.

² *Canada (Attorney General) v Cloutier*, 2005 FCA 73.

[19] The Tribunal finds that, in her application for leave to appeal and in response to the Tribunal's express request, the Claimant has not raised any issue of law, fact, or jurisdiction that may lead to the setting aside of the decision under review.

[20] After reviewing the appeal file, the General Division decision, and the Claimant's arguments, the Tribunal finds that the General Division considered the evidence before it and properly applied the legislation and the case law when assessing the Claimant's availability.

[21] The Tribunal has no choice but to find that the appeal has no reasonable chance of success.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	N. C., self-represented
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