



Citation: *MN v Canada Employment Insurance Commission*, 2021 SST 464

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant:	M. N.
Respondent:	Canada Employment Insurance Commission
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Decision under appeal:	General Division decision dated June 8, 2021 (GE-21-734)
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Tribunal member:	Pierre Lafontaine
Decision date:	September 8, 2021
File number:	AD-21-238

Decision

[1] Leave to appeal is refused. The appeal will not proceed.

Overview

[2] The Respondent (Commission) decided that the Applicant (Claimant) was disentitled from receiving EI regular benefits because she was not available for work. It determined that the Claimant was not available for work because she was taking care of her ill father. The Claimant was disentitled from EI benefits from December 23, 2019. Upon reconsideration, the Commission maintained its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[3] The General Division found that the Claimant was not available for work within the meaning of the law. Because of this, it concluded that the Claimant was to be disentitled from receiving benefits.

[4] The Claimant seeks leave to appeal of the General Division's decision to the Appeal Division. She submits that she disagrees with the General Division decision because she made reasonable and customary efforts to find a suitable job and did show capability and availability to work.

[5] I must decide whether there is some reviewable error of the General Division upon which the appeal might succeed.

[6] I am refusing leave to appeal because the Claimant's appeal has no reasonable chance of success.

Issue

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

Analysis

[8] 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:

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

[9] 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 her 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.

[10] Therefore, before I can grant leave, I need 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.

Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

[11] The Claimant submits she disagrees with the General Division decision because she made reasonable and customary efforts to find a suitable job and did show capability and availability to work. She puts forward that she attended some job fairs and that she was then promised a job by the end of 2019. She produces the employment offer letter.

[12] I note that the General Division hearing took place on June 3, 2021. I will not consider the Claimant's employment letter dated December 10, 2019, because it was not produced in evidence before the General Division.

[13] It is well-established case law that the Appeal Division does not consider new evidence because its powers are limited by law.¹ The appropriate procedure is to file an application to rescind or amend the General Division decision.²

[14] To be considered available for work, a claimant must show that he is capable of, and available for work and unable to obtain suitable employment.³

[15] Availability must be determined by analyzing three factors:

- (1) the desire to return to the labour market as soon as a suitable job is offered,
- (2) the expression of that desire through efforts to find a suitable job,
- (3) not setting personal conditions that might unduly limit the chances of returning to the labour market.⁴

[16] Furthermore, availability is determined for each working day in a benefit period for which the claimant can prove that on that day he was capable of and available for work, and unable to obtain suitable employment.⁵

[17] The General Division found that the Claimant did not show the desire to return to the labour market and did not make enough efforts to find a suitable job.

¹ *L. L. v Canada Employment Insurance Commission*, 2019 SST 1342; *S. D. v Canada Employment Insurance Commission*, 2019 SST 196; *J. H. v Canada Employment Insurance Commission*, 2019 SST 441.

² Section 66 of the DESD Act

³ Section 18(1) (a) of the *Employment Insurance Act*.

⁴ *Faucher v Canada (Employment and Immigration Commission)*, A-56-96.

⁵ *Canada (Attorney General) v Cloutier*, 2005 FCA 73.

[18] The General Division determined that the Claimant had admitted that she was not able to work from September 2019, because she was looking after her father. The General Division determined that she took a leave of absence from her part-time employment in order to care for her father. It also determined that the medical note shows that she is the father's primary and full-time caregiver.

[19] The General Division found that the Claimant limited her chances of going back to work. It considered the Claimant's admission that it would be hard to find a job that would work around the care schedule for her father, especially if she had to attend an appointment.

[20] When considering the three factors together, the General Division concluded the Claimant did not show that he was capable of and available for work and unable to find suitable employment.

[21] The law clearly states that to be entitled to benefits, a claimant must establish their availability for work, and to do this, they must look for work. Availability must be assessed for each working day in a benefit period. A claimant must establish their availability for work and this availability must not be unduly limited.⁶

[22] Therefore, I find no reviewable error of the General Division. It could not conclude from the evidence before it that the Claimant was available for work under the law.

[23] After reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Claimant in support of her request for leave to appeal, I find that the appeal has no reasonable chance of success.

⁶ *Canada Employment Insurance Commission v GS*, 2020 SST 1076; *D. B. v Canada Employment Insurance Commission*, 2019 SST 1277; *Canada (Attorney General) v Cornelissen-O'Neill*, A-652-93; *Faucher v Canada (Employment and Immigration Commission)*, A-56-96; *Canada (Attorney General) v Cloutier*, 2005 FCA 73; *De Lamirande v Canada (Attorney General)*, 2004 FCA 311.

Conclusion

[24] Leave to appeal is refused. This means the appeal will not proceed.

Pierre Lafontaine
Member, Appeal Division