Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

[TRANSLATION]

Citation: *GL v Canada Employment Insurance Commission*, 2021 SST 143

Tribunal File Numbers: AD-21-47
AD-21-48
AD-21-49
AD-21-50
AD-21-51

BETWEEN:

G. L.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: April 7, 2021

Canada

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Appellant (Claimant) made five claims for Employment Insurance regular benefits, specifically on December 21, 2014; December 20, 2015; December 25, 2016; December 24, 2017; and December 24, 2018.

[3] The Respondent, the Canada Employment Insurance Commission (Commission), determined that the Claimant was not entitled to receive benefits from May 1, 2015, because he had an early retirement agreement with his employer that included one authorized day off per week and because he did not look for work each working day of his benefit period. It disentitled him from receiving benefits from that date.

[4] The Claimant requested a reconsideration of the decision, but the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[5] The General Division determined that the Claimant had not shown that he was available for work under section 18(1)(a) of the *Employment Insurance Act* (EI Act).

[6] The Claimant now seeks leave from the Tribunal to appeal the General Division decision. He argues that the General Division made errors of fact and law.

[7] A letter was sent to the Claimant asking him to explain his grounds of appeal to the Tribunal in detail. The Claimant replied to the Tribunal's request. He argues that the General Division made an error in interpreting and applying section 18(1)(a) of the EI Act.

[8] I have to 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.

[9] I am refusing leave to appeal because the Claimant has not raised a ground of appeal based on which the appeal has a reasonable chance of success.

ISSUE

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

ANALYSIS

[11] 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:

> **(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.

[12] 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 at the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove his case; he must instead establish that the appeal has a reasonable chance of success. In other words, he must show that there is arguably a reviewable error based on which the appeal might succeed.

[13] I will grant leave to appeal if I am satisfied that at least one of the Claimant's stated grounds of appeal gives the appeal a reasonable chance of success.

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

[14] The Claimant argues that the General Division's interpretation of section 18(1)(a) of the EI Act does not reflect the current reality of the labour market and that the notion of availability needs to change. He submits that working four days per week should not prevent a claimant from receiving Employment Insurance benefits.

[15] Under section 18(1)(a) of the EI Act, 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.[1]

[16] For the purposes of section 18 of the EI Act, a working day is any day of the week except Saturday and Sunday.[2]

[17] 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:

(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[3]

[18] The General Division found that the Claimant had shown a desire to return to the labour market as soon as a suitable job was available by doing as Emploi-Québec [Quebec employment services] requested, but that he preferred to return to the employer with whom he had an early retirement agreement that included one authorized day off per week.

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[1] *Canada (Attorney General) v Cloutier*, 2005 FCA 73.
[2] Section 32 of the *Employment Insurance Regulations*.
[3] *Faucher v Canada (Employment and Immigration Commission)*, A-56-96.

[19] The General Division also found that the Claimant's availability for work had not led to concrete and sustained efforts to find a job. It pointed out that he had not provided the General Division with the name or contact information of an employer he had allegedly approached for a job.

[20] The General Division finally found that the Claimant had set conditions that unduly limited his chances of returning to the labour market by giving priority to his usual employer, with whom he had an early retirement agreement.

[21] Even though the Claimant told the General Division that he was looking for a full-time job, it clearly gave more weight to his previous statements that, since reaching an agreement with his employer on May 1, 2015, he had been available for work only four days per week and that he would not leave his usual job for a full-time job when he was close to retirement.[4]

[22] The Appeal Division has previously established that the purpose of Employment Insurance benefits is not to make up for a situation where the claimant voluntarily accepts part-time work and does not actively look for full-time work.[5]

[23] To get Employment Insurance benefits, the Claimant had to actively look for a suitable job even if it seemed more reasonable to stay with his usual employer, with whom he has an early retirement agreement that allows him to work four days per week.

[24] The Tribunal must apply the law and does not have the authority to change the legislation. Only Parliament has the authority to change the current legislation regarding availability.

[25] I note that, in his application for leave to appeal, the Claimant does not raise any issue of fact, law, or jurisdiction that could justify setting aside the decision under review.

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[4] GD3-20.
[5] *YV v Canada Employment Insurance Commission*, 2020 SST 197; *ED v Canada Employment Insurance Commission*, 2019 SST 1353; *LL v Canada Employment Insurance Commission*, 2019 SST 1342 (CanLII); *LB v Canada Employment Insurance Commission*, 2016 CanLII 59200 (SST).

[26] After reviewing the appeal file, the General Division decision, and the Claimant's arguments, I have no choice but to find that the appeal has no reasonable chance of success. The General Division considered the material before it and properly applied the law and the *Faucher* factors in assessing the Claimant's availability.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	Martin Savoie, Representative for the Applicant