



Citation: *MS v Canada Employment Insurance Commission*, 2021 SST 520

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: M. S.
Representative: S. S.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated July 30, 2021
(GE-21-1026)

Tribunal member: Melanie Petrunia

Decision date: September 23, 2021
File number: AD-21-282

Decision

[1] I am refusing leave (permission) to appeal. The appeal will not proceed.

Overview

[2] The Applicant, M. S., is the Claimant in this matter. She was in receipt of Employment Insurance Emergency Relief Benefits (EI ERB) from March 15 to September 26, 2020. She then transitioned to regular employment insurance (EI) benefits, which she received from September 27 to December 12, 2020. During this time, the Claimant was also attending high school full time. The Respondent, the Canada Employment Insurance Commission (Commission) decided that she was disentitled from receiving EI benefits from September 27, 2020, because she wasn't available for work.

[3] The Claimant appealed the Commission's decision to the Tribunal's General Division. The General Division decided that she was not available for work and dismissed her appeal.

[4] The Claimant now seeks leave to appeal the General Division decision to the Appeal Division. She says that that is not fair to say that she was not looking for work. She claims that she was looking for work and was also in contact with her current employer. She says that she was available to work when needed. She states that employment was difficult to find because of the Covid-19 pandemic and the lockdown in the area that she resides.

[5] I have to decide whether there is some reviewable error of the General Division on which the appeal might succeed. I am refusing leave to appeal because the Claimant's appeal has no reasonable chance of success.

Issue

[6] Does the Claimant raise some reviewable error upon which the appeal might succeed?

Analysis

[7] The *Department of Employment and Social Development Act* (DESD Act) sets out the only grounds of appeal of a General Division decision.¹ An appeal is not a rehearing of the original claim. Instead, I must decide whether the General Division:

- a) failed to provide a fair process;
- b) failed to decide an issue that it should have, or decided an issue that it should not have;
- c) based its decision on an important factual error;² or
- d) made an error in law.³

[8] Before the Claimant can move on to the next stage of the appeal, I have to be satisfied that there is a reasonable chance of success based on one or more of these grounds of appeal. A reasonable chance of success means that the Claimant could argue her case and possibly win.

[9] I will grant leave if I am satisfied that at least one of the Claimant's stated grounds of appeal gives the appeal a reasonable chance of success. It is a lower threshold than the one that must be met when the appeal is heard on the merits later on in the process if leave to appeal is granted.

[10] Before I can grant leave to appeal, I need to be satisfied that the Claimant's arguments fall within any of the grounds of appeal stated above and that at least one of

¹ DESD Act, s 58(2).

² The language of section 58(1)(c) actually says that the General Division will have erred if it bases its decision on a finding of fact that it makes in a perverse or capricious manner or without regard for the material before it. The Federal Court has defined perverse as "willfully going contrary to the evidence" and defined capricious as "marked or guided by caprice; given to changes of interest or attitude according to whim or fancies; not guided by steady judgment or intent" *Rahi v Canada (Minister of Citizenship and Immigration)* 2012 FC 319.

³ This paraphrases the grounds of appeal.

these arguments has a reasonable chance of success. I should also be aware of other possible grounds of appeal not precisely identified by the Claimant.⁴

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

[11] In her application for leave to appeal, the Claimant states that it is unfair to say that she was not looking for work, that she was looking and was available to her current employer. She claims that she had an obligation to that employer to be available if, and when, the business re-opened. The Claimant argues that it was difficult to find employment during the pandemic, due to lockdowns. She says that it is unfair to say that she was not actively seeking another job during the pandemic when her previous job had been effected by the lockdown.

[12] The Claimant has not identified any particular error by the General Division. I have considered that her arguments could amount to potential errors of fact.

[13] In her application for leave to appeal, the Claimant argues that she was looking for work and that she was available to her current employer. The Claimant also made these arguments before the General Division and they were considered in its decision.⁵

[14] The General Division found that the Claimant did not dispute that she was not actively searching for suitable work. I have listened to the hearing and reviewed the file before the General Division. The Claimant's representative, her mother, testified at the hearing and acknowledged that the Claimant did not apply for work but was available to her employer when the business re-opened.

[15] The General Division found that the Claimant's efforts to find a job were not reasonable or customary. It found that the Claimant did not make enough effort to find a suitable job. It also found that that she set personal conditions that might have unduly limited her chances of returning to work by limiting her availability to her previous

⁴ *Karadeolian v Canada (Attorney General)*, 2016 FC 615; *Joseph v Canada (Attorney General)*, 2017 FC 391.

⁵ General Division decision at para 21.

employer. In making these determinations, the General Division considered the Claimant's argument that there was little work available due to the lockdown order.⁶ It found that the Claimant did not present any evidence of efforts to look for work.

[16] The Claimant states in her application for leave to appeal that she was looking for work. The Claimant doesn't suggest that there is any evidence that was misunderstood or ignored by the General Division. In reviewing the file and listening to the hearing have not found that the General Division ignored or misunderstood any evidence.

[17] The Claimant is restating the same arguments as at the General Division and asking for the Appeal Division to re-weigh the evidence and come to a different conclusion. I have found that there is no arguable case that the General Division based its decision on an important error of fact and I cannot re-weigh the evidence.⁷ I am not satisfied that the appeal has a reasonable chance of success.

[18] I have also considered other grounds not raised by the Claimant. After reviewing the record and listening to the hearing before the General Division, I have not identified any errors of law or jurisdiction. There is no arguable case that the General Division failed to provide a fair process.

Conclusion

[19] Permission to appeal is refused. This means that the appeal will not proceed.

Melanie Petrunia
Member, Appeal Division

⁶ General Division decision at para 31.

⁷ *Rouleau v. Canada (Attorney General)*, 2017 FC 534, at para 42.