



Citation: *SW v Canada Employment Insurance Commission*, 2021 SST 528

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant:	S. W.
Respondent:	Canada Employment Insurance Commission
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Decision under appeal:	General Division decision dated September 8, 2021 (GE-21-1465)
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Tribunal member:	Pierre Lafontaine
Decision date:	October 1, 2021
File number:	AD-21-322

Decision

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

Overview

[2] The Respondent, the Canada Employment Insurance Commission (Commission), decided that the Applicant (Claimant) was disentitled from receiving Employment Insurance (EI) regular benefits because she was taking a training course on her own initiative, and had not proven that she was available for work. 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 did not show that she wanted to go back to work. It also found that the Claimant did not make any efforts to find work since October 2020. The General Division also found that the Claimant's choice to go to school limited her chances of returning to work. It concluded that the Claimant was not available to work under the law.

[4] The Claimant seeks leave to appeal of the General Division's decision to the Appeal Division. She submits that she was not happy about her field of work so she decided to upgrade her skills and education in October 2020. She submits that her studies do not allow her to work full-time.

[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* 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 that the General Division did not consider that she was not happy about her field of work so she decided to upgrade her skills and education in October 2020. She submits that her studies do not allow her to work full-time.

[12] 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.¹

[13] 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, and
- (3) not setting personal conditions that might unduly limit the chances of returning to the labour market.²

[14] 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.³

[15] The General Division found that the Claimant did not show that she wanted to go back to work as soon as a suitable job was available. It also found that she did not make any efforts to find work since October 5, 2020. The General Division further found that the Claimant's choice to go to school limited her chances of returning to work. It concluded that the Claimant was not available to work under the law.

[16] The EI Act 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. A claimant must establish their availability for work for each working day in a benefit period and this availability must not be unduly limited.

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

² *Faucher v Canada (Employment and Immigration Commission)*, A-56-96.

³ *Canada (Attorney General) v Cloutier*, 2005 FCA 73.

[17] Furthermore, availability must be demonstrated during regular hours for every working day and cannot be restricted to irregular hours resulting from a course schedule that significantly limits availability.⁴

[18] The evidence supports the General Division's conclusion that the Claimant has not rebutted the presumption of non-availability. The Claimant's school schedule is not flexible and she is only available to work on weekends. She also declared that she was not willing to leave the course for full-time employment.

[19] I see no reviewable error made by the General Division. The Claimant does not meet the relevant factors to determine availability. Although the academic efforts of the Claimant deserve praise, this does not eliminate the requirement to show availability within the meaning of the law.

[20] I find it necessary to reiterate that the primary purpose of unemployment insurance is to provide compensation for any insured who involuntarily find themselves unemployed, while they are looking for a job, and not to financially assist those who from personal choice decide to return to school to upgrade their training and skills.

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

Conclusion

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

Pierre Lafontaine
Member, Appeal Division

⁴ *Bertrand*, A-613-81, CUB 74252A, CUB 68818, CUB 37951, CUB 38251, CUB 25041.