



Citation: *MK v Canada Employment Insurance Commission*, 2021 SST 611

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

**Applicant:** M. K.  
**Representative:** S. K.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated August 26, 2021  
(GE-21-1101)

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**Tribunal member:** Pierre Lafontaine  
**Decision date:** October 21, 2021  
**File number:** AD-21-320

## Decision

[1] Leave to appeal is refused.

## Overview

[2] The Respondent, the Canada Employment Insurance Commission (Commission), decided that the Applicant (Claimant) was disentitled from receiving Employment Insurance (EI) regular benefits as of December 28, 2020, 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 by attending a full-time course of education, the Claimant set personal conditions that unduly limited her chances of going back to work. The General Division concluded that the Claimant did not show that she was capable of, and available for work but unable to find a suitable job.

[4] The Claimant filed an application for leave to appeal of the General Division's decision to the Appeal Division. Leave to appeal was refused.

[5] The Claimant also filed an application to rescind or amend the General Division's decision. The General Division dismissed the Claimant's application.

[6] The Claimant now seeks leave to appeal of the General Division's rescind or amend decision. She submits that she does not believe the General Division considered the additional facts and documents provided in support of her application. The Claimant puts forward that the Commission misguided her when she initially reported her school hours.

[7] I sent a letter to the Claimant asking that she explain in detail what error the General Division made and the impact of said error on its decision to refuse the application to rescind or amend. The Claimant did not answer within the allowed period.

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

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

## **Issue**

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

## **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:

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.

[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 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.

[13] 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 arguably succeed?**

[14] In support of her application for leave to appeal, the Claimant submits that she does not believe the General Division considered the additional facts and documents provided in support of her application to rescind or amend its decision. The Claimant puts forward that the Commission misguided her when she initially reported her school hours.

[15] The General Division may rescind or amend a decision given by it in respect of any particular application if new facts are presented to the General Division or the General Division is satisfied that the decision was made without knowledge of, or was based on a mistake as to, some material fact.<sup>1</sup>

[16] In support of her application to rescind or amend the General Division's decision, the Claimant submitted an Employee Availability Form and a Training Timetable.<sup>2</sup>

[17] In its initial decision, the General Division found that the Claimant had shown that she was willing to take full-time employment. The Employee Availability Form confirms the finding of the General Division. Therefore, this evidence would not change the General Division's finding and decision.

[18] In its initial decision, the General Division also found that the Claimant had not proven that she had no high school hours from February to April 2021.

[19] The General Division determined that the Training Timetable did not constitute new facts because it was available prior to the hearing. It further

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<sup>1</sup> Section 66 of the DESD Act.

<sup>2</sup> See RAGD2-8 to RAGD2-13.

determined that this evidence did not support a finding that the decision was made without knowing about, or based on a mistake about, some material fact.

[20] The General Division found that the new document relating to the school schedule for the months of February to April 2021, only showed two weeks out of the quarter semester, and each only dealt with some days of the week. The General Division concluded that the new information did not change its initial decision.

[21] I am of the view that the Claimant did not raise before the General Division any relevant new facts that either happened after the decision had been rendered or had happened prior to the decision but could not have been discovered by her acting diligently. She also has not demonstrated that the General Division decision was given without knowledge of, or that it was based on a mistake as to, some material fact.

[22] After reviewing the appeal docket, the General Division's rescind or amend decision and the Claimant's arguments in support of her request for leave to appeal, I find that the appeal has no reasonable chance of success. The Claimant has not set out reasons that fall into the above-enumerated grounds of appeal that could possibly lead to the reversal of the disputed decision.

## **Conclusion**

[23] Leave to appeal is refused.

Pierre Lafontaine  
Member, Appeal Division