



Citation: *RS v Canada Employment Insurance Commission*, 2021 SST 713

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

# **Leave to Appeal Decision**

**Applicant:** R. S.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated November 3, 2021  
(GE-21-1841)

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**Tribunal member:** Pierre Lafontaine

**Decision date:** November 26, 2021

**File number:** AD-21-377

## Decision

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

## Overview

[2] The Applicant (Claimant) established a claim for regular employment insurance benefits effective October 18, 2020. The Respondent (Commission) decided that the Claimant was disentitled from being paid EI benefits from October 19, 2020, to June 25, 2021, as he was not available for work since he was in school. 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 have a desire to return to the labour market because schooling was his primary focus and concern. It found that he made insufficient efforts to find suitable employment and that his school schedule limited unduly his chances of returning to the labour market. The General Division concluded that the Claimant did not show that he was available for work.

[4] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. He submits that the directions on how to contact the General Division were unclear to him, so he did not have a chance to present his case.<sup>1</sup> He further indicated that he had 47 hours available for work and that he was initially approved by the Commission.<sup>2</sup>

[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.

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<sup>1</sup> See AD1-6.

<sup>2</sup> See AD1A-4.

## 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 his 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 seeks leave to appeal of the General Division's decision to the Appeal Division. He submits that the directions on how to contact the General Division were unclear to him, so he did not have a chance to present his case. He further indicated that he had 47 hours available for work and that he was initially approved by the Commission.

[12] On November 1, 2021, the General Division proceeded in the absence of the Claimant since it was satisfied that he had received the notice of hearing.<sup>3</sup>

[13] I note that the Claimant filed his appeal to the General Division by email and that he authorized the General Division to correspond with him by e-mail.<sup>4</sup> The General Division sent the notice of hearing, including the date, time and teleconference information, to the Claimant by e-mail on October 20, 2021. It also left him several voice messages confirming the date and time of the hearing.

[14] I note that the notice of hearing clearly indicates how the Claimant must dial into the teleconference and that he needs to call 10 minutes before the hearing is due to start.<sup>5</sup>

[15] The record does not show that the Claimant contacted the General Division by email or by phone before its decision to inform the General Division that he was unable to attend on the hearing date or to request a new hearing date.

[16] Therefore, I find that the hearing process was fair. The General Division did not fail to respect a principle of natural justice.

[17] The General Division found that the Claimant did not have a desire to return to the labour market because schooling was his primary focus and concern. It found that he made insufficient efforts to find suitable employment and that his school schedule limited unduly his chances of returning to the labour

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<sup>3</sup> In accordance with section 12 of the *Social Security Tribunal Regulations*.

<sup>4</sup> See GD2-3.

<sup>5</sup> See GD1-2.

market. The General Division concluded that the Claimant did not show that he was available for work under the law.<sup>6</sup>

[18] Unfortunately, for the Claimant, an appeal to the Appeal Division is not a new hearing where he can re-present his case and hope for a different outcome.

[19] In his application for leave to appeal, the Claimant has not identified any reviewable errors such as jurisdiction or any failure by the General Division to observe a principle of natural justice. He has not identified errors in law nor identified any erroneous findings of fact, which the General Division may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision.

[20] For the above-mentioned reasons and after reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Claimant in support of his request for leave to appeal, I find that the appeal has no reasonable chance of success.

## **Conclusion**

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

Pierre Lafontaine  
Member, Appeal Division

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<sup>6</sup> Section 18(1) (a) of the *Employment Insurance Act*.