



Citation: *NR v Canada Employment Insurance Commission*, 2021 SST 744

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

# **Leave to Appeal Decision**

**Applicant:** N. R.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated October 19, 2021  
(GE-21-1754)

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**Tribunal member:** Pierre Lafontaine

**Decision date:** December 8, 2021

**File number:** AD-21-375

## **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 4, 2020. The Claimant received sickness benefit for 15 weeks from October 4 to November 8, 2020 and from March 28 to June 5, 2021.

[3] The Respondent (Commission) decided that the Claimant was disentitled from being paid EI benefits from June 7, 2021, as he was not available for work. Upon reconsideration, the Commission maintained its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[4] The General Division found that the Claimant made insufficient efforts to find suitable employment. It further found that only wanting to work for the same employer unduly limit the Claimant's chances of returning to the labour market. The General Division concluded that the Claimant did not show that he was available for work from June 7, 2021.

[5] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. He submits that the General Division did not consider that he has an employer and that his application concerns an extension of his EI benefits due to medical reasons and sickness.

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

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

## Issue

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

## Analysis

[9] 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.

[10] 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.

[11] 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?**

[12] The Claimant submits that the General Division did not consider that he has an employer and that his application concerns an extension of his EI benefits due to medical reasons and sickness.

[13] The evidence shows that the Claimant established a claim for employment insurance benefits effective October 4, 2020. He received 15 weeks of sickness benefit from October 4 to November 8, 2020 and from March 28 to June 5, 2021.

[14] The law clearly indicates that the maximum number of weeks for which benefits are payable in a benefit period because of a prescribed illness, injury or quarantine is 15 weeks.<sup>1</sup> The law does not allow the Tribunal any discretion with respect to the duration of sickness benefits.

[15] Furthermore, maintaining the employment tie and remaining part of the work force does not necessarily make a person available for work.<sup>2</sup> A claimant cannot wait to be called back to work by his employer and must look for employment to be entitled to benefits.

[16] The law 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.<sup>3</sup> As stated by the General Division, only looking for positions with one employer is not sufficient efforts to find employment.

[17] 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

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<sup>1</sup> Section 12(3)(c) of the *Employment Insurance Act*.

<sup>2</sup> *Canada (Attorney General) v Gagnon*, 2005 FCA 321.

<sup>3</sup> *Canada Employment Insurance Commission v GS*, 2020 SST 1076; *D. B. v Canada Employment Insurance Commission*, 2019 SST 1277; *Canada (Attorney General) v Cornelissen-O'Neill*, A-652-93; *Faucher v Canada (Employment and Immigration Commission)*, A-56-96; *Canada (Attorney General) v Cloutier*, 2005 FCA 73; *De Lamirande v Canada (Attorney General)*, 2004 FCA 311.

made in a perverse or capricious manner or without regard for the material before it, in coming to its decision.

[18] 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**

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

Pierre Lafontaine  
Member, Appeal Division