



Citation: *YA v Canada Employment Insurance Commission*, 2021 SST 771

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant:	Y. A.
Respondent:	Canada Employment Insurance Commission
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Decision under appeal:	General Division decision dated November 29, 2021 (GE-21-1954)
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Tribunal member:	Pierre Lafontaine
Decision date:	December 17, 2021
File number:	AD-21-423

Decision

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

Overview

[2] The Applicant (Claimant) established a renewal claim for employment insurance benefits. The Respondent (Commission) decided that the Claimant was not available for work because he was a full-time student. The Commission made this decision retroactively and asked the Claimant to repay benefits. 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 had a desire to return to work and had made efforts to find a suitable job. However, it found that the Claimant's availability was restricted to certain times on certain days which would unduly limit his chances of finding employment. The General Division concluded that he was not available for work under the law.

[4] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. He submits that, contrary to the General Division conclusion, he constantly told the Commission that his classes were recorded. The Claimant reiterates that he looked for work but nobody was hiring between January and April. He also submits that the decision to disentitle him retroactively is unfair and seriously affects his finances.

[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 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 submits that he constantly told the Commission that his classes were recorded. The Claimant puts forward that he looked for work but nobody was hiring between January and April. He also submits that the decision to disentitle him is unfair and seriously affects his finances.

[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 having to attend his online classes at set times, along with having to attend his in-person labs, meant that his availability was restricted to certain times on certain days, which would unduly limit his chances of finding employment. In order to come to that conclusion, it gave more weight to the Claimant's initial statements to the Commission that his classes were not recorded.

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

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

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

[16] The Claimant disputes the statements he made to the Commission. He puts forward that the agent asked him to answer the questions about his availability on the assumption that his classes were not recorded.

[17] However, I note that the Claimant declared in his application for benefits that he was obligated to attend scheduled classes. He did not answer that he could work at his own pace.⁴ Furthermore, the Claimant indicated in his application that he was only available to work on weekends.⁵ He also indicated in his application that he would accept a job as long as he could delay the start date to allow him to finish the course/program.⁶

[18] The evidence shows that the Claimant was a full-time student in a full-time program. He was not willing to give up his course to take a full-time job. Both of those restricted him from obtaining full-time jobs during regular daytime business hours, Monday to Friday.

[19] 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.

[20] 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.⁷

[21] The evidence supports the General Division's conclusion that the Claimant did not demonstrate that he was available for work but unable to find a suitable job.

⁴ See GD3-16.

⁵ See GD3-17.

⁶ See GD3-17.

⁷ *Bertrand*, A-613-81, CUB 74252A, CUB 68818, CUB 37951, CUB 38251, CUB 25041.

[22] 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 EI Act.

[23] 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

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

Pierre Lafontaine
Member, Appeal Division