



Citation: *AR v Canada Employment Insurance Commission*, 2021 SST 779

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: A. R.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated December 2, 2021
(GE-21-2022)

Tribunal member: Pierre Lafontaine

Decision date: December 22, 2021

File number: AD-21-439

Decision

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

Overview

[2] The Applicant (Claimant) did not continue in her job as she moved to another city to attend a Policing and Corrections course and applied for EI benefits. The Respondent, the Canada Employment Insurance Commission (Commission), decided that she voluntarily left (or chose to quit) her job without just cause, so it was not able to pay her benefits.

[3] The Commission also decided that the Claimant was not available for work as she was taking her course and disentitled her from benefits from September 8, 2021, onward. 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 did not voluntarily leave her employment because her contract was not renewed. However, it found that the Claimant had set personal conditions that unduly reduced her chances of returning to the labour market by attending full-time school. The General Division concluded that the Claimant did not prove her availability for work, so the Commission correctly disentitled the Claimant from September 8, 2021, onward.

[5] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. She submits that she is ready and willing to work but cannot find a job. She puts forward that she can work afternoons and evening and weekend shifts. The Claimant mentions that she will start working full time after she graduates.

[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 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.

[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 she is ready and willing to work but cannot find a job. She puts forward that she can work afternoons and evening and weekend shifts. The Claimant mentions that she will start working full time after she graduates from the policing and corrections program.

[13] 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

[14] 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

[15] 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

[16] The evidence shows that the Claimant is a full-time student in a full-time program. The Claimant is not willing to give up her course to take a full-time job. Both of those restrict her from obtaining full-time jobs during regular business hours, Monday to Friday.

¹ Section 18(1) (a) of the EI Act.

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

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

[17] 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.

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

[19] 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

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

[21] 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.

[22] 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

[23] 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.