



Citation: *JS v Canada Employment Insurance Commission*, 2022 SST 213

**Social Security Tribunal of Canada  
Appeal Division**

**Leave to Appeal Decision**

<b>Applicant:</b>	J. S.
<b>Respondent:</b>	Canada Employment Insurance Commission
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<b>Decision under appeal:</b>	General Division decision dated February 17, 2022 (GE-22-79)
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<b>Tribunal member:</b>	Jude Samson
<b>Decision date:</b>	April 4, 2022
<b>File number:</b>	AD-22-127

## Decision

[1] I am refusing leave (permission) to appeal. The appeal will not proceed.

## Overview

[2] J. S. is the Claimant in this case. Her employer reduced the hours that she was working because of the COVID-19 pandemic. So, she applied for Employment Insurance (EI) regular benefits. However, the Canada Employment Insurance Commission (Commission) said that she didn't qualify because she had limited her efforts at finding a new job, and hadn't shown that she was available for work.<sup>1</sup>

[3] The Claimant appealed the Commission's decision to the Tribunal's General Division, but it dismissed her appeal.

[4] The Claimant now wants to appeal the General Division decision to the Tribunal's Appeal Division. She argues that she's a victim of discrimination, that other people in the same situation as her get EI benefits, and that the General Division was wrong to say that she's not really looking for other full-time jobs.

[5] Unfortunately for the Claimant, I've found that her appeal has no reasonable chance of success. I have no choice, then, but to refuse permission to appeal.

## Issue

[6] This decision focuses on one issue: Does the Claimant's appeal have a reasonable chance of success?

## Analysis

[7] Most Appeal Division files follow a two-step process. This appeal is at step one: permission to appeal.

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<sup>1</sup> Service Canada delivers the EI program for the Commission.

[8] The legal test that the Claimant needs to meet at this step is a low one: Is there any arguable ground on which the appeal might succeed?<sup>2</sup> If the appeal has no reasonable chance of success, then I must refuse permission to appeal.<sup>3</sup>

[9] To decide this question, I considered whether the General Division could have made a relevant error.<sup>4</sup>

### **The appeal has no reasonable chance of success**

[10] To qualify for EI regular benefits, the Claimant had to be available for work and had to make reasonable and customary efforts to find work.<sup>5</sup> Here, the Claimant continued to work, although for reduced hours. Regardless of the hours she was working, the Claimant was reluctant to leave her job: she was in a union, she had good benefits, and she anticipated better opportunities shortly.

[11] However, the General Division concluded that the Claimant's attachment to her existing job placed an important limit on her ability to find another job. Specifically, the General Division made the following key findings:

- The Claimant did not make enough efforts to find another suitable job.
- The Claimant set personal conditions that unduly limited her chances of finding better work.
- So, the Claimant did not qualify for EI regular benefits.

#### **– There is no arguable case that the Claimant is a victim of discrimination**

[12] The Claimant argues that she's the victim of discrimination because there are other people who are in the same situation as her and who receive EI benefits.

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<sup>2</sup> This legal test is described in cases like *Osaj v Canada (Attorney General)*, 2016 FC 115 at paragraph 12 and *Ingram v Canada (Attorney General)*, 2017 FC 259 at paragraph 16.

<sup>3</sup> This is the legal test described in section 58(2) of the *Department of Employment and Social Development Act* (DESD Act).

<sup>4</sup> The relevant errors, formally known as "grounds of appeal," are listed under section 58(1) of the DESD Act.

<sup>5</sup> These requirements come from sections 18(1)(a) and 50(8) of the *Employment Insurance Act*.

[13] This argument has no reasonable chance of success.

[14] This appeal is about the Claimant's application for EI regular benefits and her ability to show that she qualifies for those benefits. This appeal is not about what the Commission might have done in other cases.

[15] In addition, the Appeal Division's focus is on errors that the General Division might have made. Yet, the Claimant has not specified how the General Division might have discriminated against her.

– **There is no arguable case that the General Division based its decision on an important mistake about the Claimant's efforts at finding a new job**

[16] In its decision, the General Division summarized and considered the Claimant's evidence about her efforts to find other work.<sup>6</sup> The General Division acknowledged the Claimant's evidence at the hearing about her efforts to find full-time and part-time work. However, it also found that the Claimant did not keep good records of her job search activities and that it saw little evidence of her applying for full-time jobs.<sup>7</sup>

[17] The Claimant now argues that the General Division was wrong and that she is looking for and applying for full-time jobs. However, the Claimant has not pointed to any evidence that the General Division might have overlooked or misinterpreted. The Claimant's circumstances might have changed, but the General Division could only make findings based on the evidence that the parties had given to it.

[18] As a result, this argument has no reasonable chance of success.

– **The Claimant's other possible arguments have no reasonable chance of success**

[19] Instead of identifying a specific error, the Claimant seems to disagree with the General Division's conclusion. So, she's asking me to reweigh the evidence. Or, she's

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<sup>6</sup> See, for example, paragraphs 17–24, 33–34, and 37–42 of the General Division decision.

<sup>7</sup> See, for example, paragraphs 19, 22, 34, and 38–41 of the General Division decision.

challenging the application of settled legal principles to the facts of her case. But I cannot consider these errors.<sup>8</sup>

[20] Aside from the Claimant's arguments, I have reviewed the file and examined the General Division decision.<sup>9</sup> The General Division summarized the law and used evidence to support its decision. I did not find evidence that the General Division might have ignored or misinterpreted.

## **Conclusion**

[21] I have concluded that the Claimant's appeal has no reasonable chance of success. I have no choice, then, but to refuse permission to appeal. This means that the appeal will not proceed.

Jude Samson  
Member, Appeal Division

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<sup>8</sup> See paragraphs 7 to 11 of the Federal Court of Appeal's decision in *Garvey v Canada (Attorney General)*, 2018 FCA 118.

<sup>9</sup> The Federal Court has said that I must do this in decisions like *Griffin v Canada (Attorney General)*, 2016 FC 874 and *Karadeolian v Canada (Attorney General)*, 2016 FC 615.