



Citation: *TQ v Canada Employment Insurance Commission*, 2022 SST 294

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: T. Q.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated February 3, 2022
(GE-21-2559)

Tribunal member: Jude Samson

Decision date: April 25, 2022

File number: AD-22-129

Decision

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

Overview

[2] T. Q. is the Claimant. The Canada Employment Insurance Commission (Commission) approved her application for Employment Insurance (EI) regular benefits.

[3] However, the Commission later reviewed the Claimant's file and said that she didn't qualify for some of the benefits that she had received. Specifically, the Commission found that the Claimant's school schedule meant that she was unavailable for work from January 4 to May 28, 2021.¹ The Commission demanded that the Claimant repay the benefits that she had received during this period.

[4] The Claimant appealed the Commission's decision to the Tribunal's General Division, but it dismissed her appeal. First, the General Division concluded that the Commission had the power to review the Claimant's entitlement to EI benefits. Second, the General Division found that the Claimant set personal conditions that significantly limited her chances of returning to the job market.

[5] The Claimant now wants to appeal the General Division decision to the Tribunal's Appeal Division. She is arguing that the General Division's acted unfairly towards her.

[6] I sympathize with the Claimant's circumstances. However, I've found that her appeal has no reasonable chance of success. I have no choice, then, but to refuse permission to appeal.

¹ To qualify for EI regular benefits, a person has to be capable of and available for work: see section 18(1)(a) of the *Employment Insurance Act*.

Issue

[7] This decision focuses on one issue: Is there an arguable case that the General Division acted unfairly towards the Claimant by ignoring the questions in her email dated February 1, 2022?²

Analysis

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

[9] The legal test the Claimant needs to meet at this step is low: Is there any arguable ground on which the appeal might succeed?³ If the appeal has no reasonable chance of success, then I must refuse permission to appeal.⁴

[10] To decide this question, I focused on whether the General Division could have made a relevant error.⁵

There is no arguable case that the General Division acted unfairly towards the Claimant

[11] The day after the hearing, on January 26, 2022, the General Division asked the Commission some questions.⁶ The Commission provided its answers the next day.⁷ The General Division then sent the Commission's answers to the Claimant, and gave her time to respond.⁸

² This email is document GD8. This is the only issue raised in the Claimant's Application to the Appeal Division (AD1).

³ 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.

⁴ This is the legal test described in section 58(2) of the *Department of Employment and Social Development Act* (DESD Act).

⁵ The relevant errors, formally known as "grounds of appeal," are listed under section 58(1) of the DESD Act.

⁶ See the Tribunal's letter dated January 26, 2022 (document GD5).

⁷ See document GD6.

⁸ See the Tribunal's letter dated January 27, 2022 (document GD7).

[12] The Claimant responded by email on February 1, 2022.⁹ The General Division acknowledged receipt of her response on February 3, 2022. Also on that day, the General Division made its decision and sent it to the parties.

[13] The Claimant is now alleging that the General Division acted unfairly towards her by ignoring the questions in her email of February 1, 2022. She also highlights how the General Division acknowledged receipt of her email on the same day as it gave its decision.

[14] Unfortunately for the Claimant, I've concluded that her arguments have no reasonable chance of success.

[15] First, the General Division clearly considered the Claimant's email before finalizing its decision.¹⁰

[16] Second, the General Division found that the Claimant's questions were irrelevant to the issue it had to decide: the Claimant's availability for work from January to May 2021.

[17] The Claimant has not really attacked this conclusion. For example, she has not explained how the answers to her questions would affect the General Division's assessment of her availability for work.

[18] Instead of being about her entitlement to benefits, the Claimant's questions were about the Commission's processes. As the General Division explained, the Tribunal operates independently from the Commission. In other words, the General Division wasn't ignoring the Claimant's questions. It simply couldn't answer them.

[19] Aside from the Claimant's arguments, I also reviewed the file and examined the General Division decision.¹¹ The General Division summarized the law and used

⁹ The Claimant's email is numbered GD8.

¹⁰ See paragraphs 8 and 17 of the General Division decision.

¹¹ 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.

evidence to support its decision. I did not find evidence that the General Division might have ignored or misinterpreted.

Conclusion

[20] I've 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