



Citation: *KG v Canada Employment Insurance Commission*, 2022 SST 425

**Social Security Tribunal of Canada
Appeal Division**

Leave to Appeal Decision

Applicant: K. G.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated February 4, 2022
(GE-21-2308)

Tribunal member: Janet Lew

Decision date: May 27, 2022

File number: AD-22-175

Decision

[1] Leave (permission) to appeal is refused because the appeal does not have a reasonable chance of success. The appeal will not be going ahead.

Overview

[2] The Applicant, K. G. (Claimant) is appealing the General Division decision. The General Division found that the Claimant did not prove that she was available for work from October 5, 2020 to July 16, 2021. As a result, the General Division found that the Claimant was disentitled from receiving Employment Insurance benefits for this period. This left the Claimant responsible for repaying benefits that she had already received.

[3] The Claimant argues that the General Division made a factual error about her efforts to look for work.

[4] The Claimant is asking the Respondent, the Canada Employment Insurance Commission (Commission), to consider reducing or waiving the overpayment because of the length the delay in reconsidering her claim.

[5] Before the Claimant can move ahead with his appeal, I have to decide whether the appeal has a reasonable chance of success.¹ Having a reasonable chance of success is the same thing as having an arguable case.² If the appeal does not have a reasonable chance of success, this ends the matter.

[6] I am not satisfied that the appeal has a reasonable chance of success. Therefore, I am not giving permission to the Claimant to move ahead with her appeal.

¹ Under section 58(1) of the *Department of Employment and Social Development Act* (DESD Act), I am required to refuse permission if am satisfied, "that the appeal has no reasonable chance of success."

² See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

Issue

[7] Is there an arguable case that the General Division made a factual error about the Claimant's efforts to look for work?

Analysis

[8] The Appeal Division must grant permission to appeal unless the appeal has no reasonable chance of success. A reasonable chance of success exists if there is a possible jurisdictional, procedural, legal, or certain type of factual error.³

[9] Once an applicant gets permission from the Appeal Division, they move to the actual appeal. There, the Appeal Division decides whether the General Division made an error. If it decides that the General Division made an error, then it decides how to fix that error.

Is there an arguable case that the General Division made a factual error about the Claimant's efforts to look for work?

[10] The Claimant argues that the General Division made an error about her efforts to look for work. She claims that, if the General Division had appreciated the evidence regarding her job search efforts, it would have accepted that she was available for work.

[11] The Claimant says that, during June and July 2021, she took necessary action to look for work while undergoing training. In particular, she says that she compiled a list of available jobs, networked through existing connections, wrote a resume with updated skills and a new career, and prepared her interview skills. Therefore, when she completed her training received her certificate with honours on July 16, she was able to secure full-time permanent employment immediately.⁴

³ See section 58(1) of the DESD Act. For factual errors, the General Division had to have based its decision on an error that was made in a perverse or capricious manner, or without regard for the evidence before it.

⁴ See Claimant's Application to the Appeal Division-Employment Insurance, at AD1-10.

[12] The General Division wrote:

I recognize that the Claimant says that in June 2021, she was preparing her resume, signed up for on-line job alerts, and began looking on-line for suitable jobs. However, as set out above, she admits she was doing these activities because they were a requirement of her course work. She made no efforts to apply for suitable jobs until mid-July 2021, when she submitted three applications. She attended an interview in July 2021, and started working for current employer on August 5, 2021.

[13] The General Division's findings are generally consistent with the Claimant's statements and with the evidence. For that reason, I am not satisfied that there is an arguable case that the General Division made a factual error.

[14] The Claimant is essentially asking me to reassess the evidence on this point and to come to a different conclusion. However, a reassessment is not one of the grounds upon which I can grant leave and let the appeal move forward.

[15] There is also the matter that the General Division found that the Claimant set personal conditions that limited her chances of going back to work. The General Division found that the Claimant was not capable of and available for work not only because it found her job search efforts insufficient, but also because it found that she set personal conditions that limited her chances of going back to work. The Claimant does not challenge the General Division's findings that she said personal conditions that limited her chances of going back to work.

[16] In short, setting aside the issue of the Claimant's job search efforts, the General Division still would have found that she was unavailable for work because she set personal restrictions that limited her chances of going back to work.

The Claimant's options

[17] There was a lengthy delay before the Commission reconsidered the Claimant's application for benefits and decided that she was unavailable for work. The Claimant

notes that the amount of the overpayment would have been “drastically reduced”⁵ if the Commission had conducted its reconsideration sooner. The Claimant is now left with a substantial overpayment.

[18] The Claimant has two options:

1. She can ask the Commission to consider writing off the debt because of undue hardship. If the Claimant does not like the Commission’s response, her option then is to appeal to the Federal Court, or
2. She can phone Canada Revenue Agency’s Debt Management Call Centre at 1-866-864-5823. She can ask them to consider writing off the overpayment or about accepting a repayment schedule.

Conclusion

[19] Permission to appeal is refused. This means that the appeal will not be going ahead.

Janet Lew
Member, Appeal Division

⁵ Claimant's Application to the Appeal Division-Employment Insurance, at AD1-10.