



Citation: *KT v Canada Employment Insurance Commission*, 2022 SST 456

**Social Security Tribunal of Canada
Appeal Division**

Leave to Appeal Decision

Applicant: K. T.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated April 11, 2022
(GE-22-605)

Tribunal member: Jude Samson

Decision date: June 1, 2022

File number: AD-22-260

Decision

[1] Leave (permission) to appeal is refused. The appeal will not proceed.

Overview

[2] K. T. is the Claimant in this case. The Canada Employment Insurance Commission (Commission) paid her Employment Insurance (EI) regular benefits while she was attending school.¹ The Claimant contacted the Commission several times to confirm that she should be getting EI benefits and provided the Commission with all the information it wanted about her studies.

[3] Then, several months later, the Commission reassessed the Claimant's file. The Commission decided that the Claimant wasn't entitled to some of the benefits that she received, and demanded that she pay back almost \$7,000. According to the Commission, the Claimant's schooling meant that she wasn't available for work, which is required to receive EI benefits.²

[4] The Claimant appealed the Commission's decision to the Tribunal's General Division. Here is a summary of the General Division decision:

- With knowledge of the Claimant's schooling, the Commission decided to pay her benefits **between January 12 and April 30, 2021**. It then acted in bad faith when it reassessed her case later, based on the same information. The General Division decided that the Commission should not have revisited its earlier decision, so the Claimant is entitled to benefits during this period.
- The Commission delayed its decision about the Claimant's availability **between September 7, 2021, and April 8, 2022**. As a result, there was no issue about changing a previous decision. The General Division agreed with

¹ Service Canada delivers the Employment Insurance program for the Commission.

² This case is about the availability requirement under section 18(1)(a) of the *Employment Insurance Act*.

the Commission and concluded that the Claimant wasn't available for work, so wasn't entitled to EI benefits during this period.

[5] The Claimant is now appealing the General Division decision about her entitlement to benefits between September 7, 2021, and April 8, 2022.³ She is arguing that the General Division based its decision on an important mistake about the facts of her case.

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

Issues

[7] This decision focuses on two issues:

- a) Could the General Division have based its decision on an important mistake about the facts of the case by overlooking or misinterpreting the Claimant's efforts to confirm that she was entitled to EI benefits?
- b) Is there any other reason to give the Claimant permission to appeal?

Analysis

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

[9] The legal test that the Claimant needs to meet at this step is low: Is there any arguable ground on which the appeal might succeed?⁴ If the appeal has no reasonable chance of success, then I must refuse permission to appeal.⁵

³ The Commission is also appealing the General Division decision: see Tribunal File Number AD-22-275. A separate decision will be made in that file.

⁴ 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.

⁵ This is the legal test described in section 58(2) of the *Department of Employment and Social Development Act*.

[10] To decide this question, I focused on whether the General Division could have made a relevant error.⁶

The appeal has no reasonable chance of success

– The General Division considered the Claimant’s efforts to confirm that she was entitled to EI benefits

[11] In her Application to the Appeal Division, the Claimant alleges that the General Division based its decision on an important mistake about the facts of her case. Specifically, she highlights the efforts she made to contact the Commission and confirm that she should be receiving EI benefits.

[12] The General Division made no mistake about this evidence. To the contrary, it accepted this information and considered it in its decision.⁷ In fact, this evidence played an important part in the General Division’s conclusion about the Claimant’s benefits from January 12, to April 30, 2021. However, it explained that this evidence was less relevant to the second period because there was no issue about the Commission trying to change a previous decision.

[13] As a result, it’s not arguable that the General Division overlooked or misinterpreted the Claimant’s efforts to confirm that she was entitled to EI benefits.

[14] In addition, the courts have said that the Tribunal must decide whether a person is entitled to benefits based on just the law, and not on misinformation that the person might have received from one of the Commission’s agents.⁸ The Tribunal has to follow those court decisions.

[15] For all these reasons, this argument has no reasonable chance of success.

⁶ The relevant errors, formally known as “grounds of appeal,” are listed under section 58(1) of the *Department of Employment and Social Development Act*.

⁷ See, for example, paragraphs 12, 27, and 56 to 76 of the General Division decision.

⁸ See, for example, *Nadji v Canada (Attorney General)*, 2016 FC 885 at paragraph 13 and *Canada (Attorney General) v Shaw*, 2002 FCA 325.

– **There are no other reasons for giving the Claimant permission to appeal**

[16] The Claimant also argues that many other students work and attend school full-time or part-time. She also says that she was looking for work while receiving EI benefits.

[17] It's unclear how the Claimant's arguments relate to a possible error in the General Division decision.

[18] As it was required to do, the General Division focused its decision on the facts of the Claimant's case. The General Division was not required to consider the situation of unknown students who study and work.

[19] The General Division also recognized the Claimant's efforts to find suitable work.⁹ Her work efforts did not prevent her from receiving EI benefits.

[20] As a result, these arguments have no reasonable chance of success.

[21] Aside from the Claimant's arguments, I also reviewed the file and examined the General Division decision.¹⁰ The General Division summarized the law and used evidence to support its decision. I didn't find evidence supporting the Claimant's appeal that the General Division might have ignored or misinterpreted.

Conclusion

[22] 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

⁹ See paragraphs 94-98 of the General Division decision.

¹⁰ 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.