



Citation: *AN v Canada Employment Insurance Commission*, 2022 SST 505

**Social Security Tribunal of Canada
Appeal Division**

Leave to Appeal Decision

Applicant: A. N.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated April 13, 2022
(GE-22-585)

Tribunal member: Pierre Lafontaine

Decision date: June 13, 2022

File number: AD-22-305

Decision

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

Overview

[2] The Respondent, the Canada Employment Insurance Commission (Commission), decided that the Applicant (Claimant) was disentitled from receiving Employment Insurance (EI) regular benefits as of September 27, 2020, because she was not available to work.

[3] 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 show that she wanted to go back to work as soon as a suitable job was available. It found that the Claimant, by her own admission, made no on-going effort to obtain employment, except for three applications in June of 2020. The General Division found that the Claimant set a personal condition when she decided to remain at home to provide childcare for her son. It concluded that the Claimant was not available for work from September 27, 2020.

[5] The Claimant seeks leave to appeal of the General Division's decision to the Appeal Division. She submits that the General Division rendered its decision without considering all the evidence before it.

[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 the General Division assumed incorrectly that she was staying home to take care of her son. She puts forward that her employer told her to apply for EI benefits until work became available. She submits that she does not understand how she was supposed to find a job in the midst of all the chaos surrounding COVID-19, and after the Prime Minister of Canada told Canadians to stay home to lessen the spread.

[13] To be considered available for work, a claimant must show that they are 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 General Division found that the Claimant did not show that she wanted to go back to work as soon as a suitable job was available. It found that the Claimant made insufficient efforts to find employment. The General Division found that the Claimant set a personal condition when she decided to stay home

¹ Section 18(1) (a) of the *Employment Insurance Act*.

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

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

to take care of her son. It concluded that the Claimant was not available to work under the law.

[17] I note that the Claimant declared on several occasions that she was not looking for work and staying at home to take care of her son.⁴ The employer confirmed that the Claimant was staying home to take care of her son.⁵

[18] The law 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**. 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] Case law has established that a claimant cannot merely wait to be called back to work and must look for employment to be entitled to benefits. This requirement does not go away if the unemployment period is short-term. It follows the position that the employment insurance program is designed so that only those who are genuinely unemployed and **actively looking for work** will receive benefits.⁶

[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 I understand the Claimant's position regarding the COVID-19 period, this does not eliminate the requirement to show availability within the meaning of the law.

⁴ See GD3-139, GD3-142 and GD3-157.

⁵ See GD3-156

⁶ *Canada Employment Insurance Commission v GS*, 2020 SST 1076; *D. B. v Canada Employment Insurance Commission*, 2019 SST 1277; *Canada (Attorney General) v Cornelissen-O'Neill*, A-652-93; *Faucher v Canada (Employment and Immigration Commission)*, A-56-96; *Canada (Attorney General) v Cloutier*, 2005 FCA 73; *De Lamirande v Canada (Attorney General)*, 2004 FCA 311; CUB 76450; CUB 69221; CUB 64656; CUB 52936; CUB 35563.

[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 cannot find any failure by the General Division to observe a principle of natural justice. 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