



Citation: *CL v Canada Employment Insurance Commission*, 2022 SST 559

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

**Applicant:** C. L.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated March 10, 2022  
(GE-22-77)

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**Tribunal member:** Janet Lew

**Decision date:** June 27, 2022

**File number:** AD-22-243

## 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, C. L. (Claimant), is appealing the General Division decision. The General Division found that the Claimant failed to prove that he was available for work from September 7, 2021 while attending a training course. The General Division concluded that he was therefore disentitled from receiving Employment Insurance benefits after this date.

[3] The Claimant argues that the General Division made a factual error when it found that he was not available for work. He argues that the General Division made erroneous assumptions without regard for the evidence before it.

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

[5] 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 his appeal.

## Issue

[6] Is there an arguable case that the General Division made a factual error about the Claimant's availability?

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<sup>1</sup> 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."

<sup>2</sup> See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

## Analysis

[7] 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.<sup>3</sup>

[8] For factual errors, the General Division had to have based its decision on an error that it made in a perverse or capricious manner, or without regard for the evidence before it.

[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 availability?**

[10] The Claimant argues that the General Division made erroneous assumptions about the following, that:

- he took advantage of the timing of his training course,
- his place of employment at the time was at a "slower pace work setting and [his] hours] at work dropped because it was at an off season timing and work was slower"<sup>4</sup>

[11] The Claimant explains that whenever his employer called him, he went to work. Therefore, he claims that he was always ready, willing and able to work while he attended school. He suggests that work was regularly available. He claims that the General Division would have accepted that he was available for work, if it had not made erroneous assumptions that his employer had little work to offer him.

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<sup>3</sup> See section 58(1) of the DESD Act.

<sup>4</sup> See Claimant's Application to the Appeal Division--Employment Insurance, filed April 10, 2022, at AD1-4.

– **The General Division’s finding that he took advantage of the timing of his course**

[12] The General Division wrote that the Claimant “took advantage of the downtime in this seasonal employment to complete the training course.”<sup>5</sup> The Claimant says this was factually incorrect.

[13] The General Division made this finding when it considered whether the Claimant had a desire to return to the labour market as soon as an employer offered him a suitable job.

[14] The General Division cited the evidence upon which it found that the Claimant “took advantage of the downtime.” The Claimant spoke with the Commission in December 2021 and reportedly advised that he had decided to take advantage of the slow season by enrolling in the Heavy Equipment Operator course.<sup>6</sup>

[15] The General Division’s findings accurately reflected the evidence. Therefore, it had not made an erroneous assumption that the Claimant took advantage of the timing of his training course.

– **The General Division’s finding that his employer could not offer him much work**

[16] As for the second factor, the General Division’s findings were also consistent with the evidence before it.

[17] The Commission’s phone log notes read:

However, according to the claimant, his work is seasonal and theses [*sic*] days the work is slow and whenever work is available he is working.<sup>7</sup>

[18] At the hearing before the General Division, the member asked the Claimant how often he worked after September 7, 2021. The member specifically wanted to know which days the Claimant worked and how long he worked for his employer. For

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<sup>5</sup> See General Division decision, at para 29.

<sup>6</sup> See Supplementary Record of Claim dated December 3, 2021, at GD3-26.

<sup>7</sup> See Supplementary Record of Claim dated December 3, 2021, at GD3-26.

instance, the member wanted to know whether the Claimant worked a couple of days per month, every day, only a couple of hours, or other.<sup>8</sup>

[19] The Claimant testified, “It was mostly at the end of my course ‘cause there was no work from September to December and then one of our seasons, one of our fisheries opened up, so then they called me in.”<sup>9</sup>

[20] The Claimant produced pay cheque stubs with his Notice of Appeal to the General Division.<sup>10</sup> He confirmed that the pay cheque stubs covered only December 2021. In other words, he did not work much, if at all, between September 2021 and December 2021.

[21] The Claimant had also testified that, indeed, he had applied for Employment Insurance benefits in July 2021 because work had slowed down and he was not getting many hours.

[22] The Claimant also testified that after December 2021, “There was no work and the fishery, the quota was capped for the fish and there was no work after that.”<sup>11</sup>

[23] Given this evidence, it was reasonable for the General Division to conclude that the Claimant’s employer did not have much work to offer the Claimant.

[24] I am not satisfied that the General Division made the factual errors that the Claimant says it did. There was an evidentiary basis for the General Division’s findings.

## **Conclusion**

[25] Permission to appeal is refused because the appeal does not have a reasonable chance of success. This means that the appeal will not be going ahead.

Janet Lew  
Member, Appeal Division

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<sup>8</sup> At approximately 21:55 to 23:16 of the audio recording of the General Division hearing.

<sup>9</sup> At approximately 23:18 to 23:33 of the audio recording of the General Division hearing.

<sup>10</sup> See Claimant's paycheque stubs, at GD2-3 and GD2-4.

<sup>11</sup> At approximately 24:13 to 24:30 of the audio recording of the General Division hearing.