Citation: *AZ v Canada Employment Insurance Commission*, 2022 SST 578

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	A. Z.
Representative:	V. Z.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated April 20, 2022 (GE-22-570)

Tribunal member:	Pierre Lafontaine
Decision date:	June 30, 2022
File number:	AD-22-336

Decision

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

Overview

[2] The Respondent (Commission) decided that the Applicant (Claimant) was disentitled from receiving Employment Insurance (EI) regular benefits from March 29, 2021 to June 22, 2021, because he was not available for work while attending school full-time. Upon reconsideration, the Commission maintained its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[3] The General Division found that the Claimant wanted to go back to work as soon as possible and that he had made enough efforts to find a suitable job. However, it found that the Claimant set personal conditions that might have unduly limited his chances of going back to work. The General Division concluded that he was not available for work under the law.

[4] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. The Claimant submits that the General Division made errors in fact and in law.

[5] I must decide whether there is some reviewable error of the General Division upon which the appeal might succeed.

[6] I am refusing leave to appeal because the Claimant's appeal has no reasonable chance of success.

Issue

[7] Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

Analysis

[8] 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.

[9] 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 his 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.

[10] 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?

[11] The Claimant submits that the General Division made an error in deciding that he was a full-time student. He submits that he was no a full-time student throughout the last four months of his Grade 12 year.

[12] The Claimant puts forward that he was certain that all the Commission's questions were regarding his university courses, which he was definitely not willing to drop. If he had been aware that the Commission was referring to his high school courses, he would have mentioned that he spent much less time studying and attending classes (approximately 10 hours per week) and that he was able to drop them at any time for employment.

[13] The General Division found it more likely than not that the Claimant was a full-time student. He was completing his last year in high school to get his diploma at X High School at Victoria BC. It found that this was consistent with the Claimant's own statement to the Commission that his school considered him a full-time student.[1]

[14] During an interview by the Commission, the agent advised the Claimant that the questions concerned the benefit period starting from March 28, 2021. The Claimant answered that he was obligated to spend (9) hours per week to attend the scheduled virtual sessions from Monday to Friday, that he could not change the courses schedules, and that he would not drop the courses in order to accept full-time employment.[2]

[15] The General Division gave little weight to what the Claimant said later, namely that he would drop classes to accept work. It found that it was not until after the Commission's initial decision denying him benefits that he said that he was willing and available to work at a full-time job.

[16] To be considered available for work, a claimant must show that he is capable of, and available for work and unable to obtain suitable employment.[3]

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[1] See GD3-62.
[2] See GD3-62.
[3] Section 18(1) (a) of the *Employment Insurance Act* (EI Act).

[17] 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.[4]

[18] 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.[5]

[19] The evidence shows that the Claimant was a full-time student at X High School. He was obligated to spend (9) hours per week to attend the scheduled virtual sessions from Monday to Friday and he was not willing to give up his courses to take a full-time job. Both of those restricted him from obtaining full-time jobs during regular business hours, Monday to Friday.

[20] The EI Act 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.

[21] Furthermore, availability must be demonstrated during **regular hours for every working day** and cannot be restricted to irregular hours resulting from a course schedule that significantly limits availability.[6]

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[4] *Faucher v Canada (Employment and Immigration Commission)*, A-56-96.
[5] *Canada (Attorney General) v Cloutier*, 2005 FCA 73.
[6] *Bertrand*, A-613-81, CUB 74252A, CUB 68818, CUB 37951, CUB 38251, CUB 25041.

[22] The evidence supports the General Division's conclusion that the Claimant did not demonstrate that he was available for work but unable to find a suitable job.

[23] I see no reviewable error made by the General Division. The Claimant does not meet the relevant factors to determine availability. Although the academic efforts of the Claimant deserve praise, this does not eliminate the requirement to show availability within the meaning of the EI Act.

[24] 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 have no choice but to find that the appeal has no reasonable chance of success.

Conclusion

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

Pierre Lafontaine
Member, Appeal Division