



Citation: *EP v Canada Employment Insurance Commission*, 2022 SST 613

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

# **Leave to Appeal Decision**

**Applicant:** E. P.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated May 2, 2022  
(GE-22-801)

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**Tribunal member:** Pierre Lafontaine

**Decision date:** July 8, 2022

**File number:** AD-22-339

## **Decision**

[1] Leave to appeal is refused. This 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 because she was not available for work.

[3] The Commission determined that the Claimant was not available for work because she was not willing to leave her current job to accept a full-time job. 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 wanted to go back to work but that she made insufficient efforts to find a suitable job. It found that she limited her chances of returning to full-time work by waiting to return to her regular job. The General Division concluded that she was not available for work within the meaning of the law.

[5] The Claimant seeks leave to appeal of the General Division's decision to the Appeal Division. She submits that she worked all her life and cannot retire with the amount of her pension. She feels that the Commission wants to punish her for not wanting to leave her current job. She puts forward that there is no way she would find a full-time job at her age and in her medical condition.

[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 she worked all her life and cannot retire with the amount of her pension. She puts forward that the Commission wants to punish her for not wanting to leave her current job. She puts forward that there is no way she would find a full-time job at her age and in her medical condition.

[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.<sup>1</sup>

[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,
- (3) not setting personal conditions that might unduly limit the chances of returning to the labour market.<sup>2</sup>

[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.<sup>3</sup>

[16] The General Division found that the Claimant wanted to return to work but that she made insufficient efforts to find a suitable job. It took notice that the Claimant declared to the Commission that she was not applying for jobs because she could only be available around her current job. The General Division found that the Claimant set a personal condition when she decided to await a return to her regular employer.<sup>4</sup>

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<sup>1</sup> Section 18(1) (a) of the *Employment Insurance Act*.

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

<sup>3</sup> *Canada (Attorney General) v Cloutier*, 2005 FCA 73.

<sup>4</sup> See GD3-15.

[17] When considering the three factors together, the General Division concluded the Claimant did not show that she was capable of and available for work and unable to find suitable employment.

[18] The law indicates 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] 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.<sup>5</sup>

[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 personal decision to remain with her current employer, this does not eliminate the requirement to show availability within the meaning of the law.

[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

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<sup>5</sup> *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.

availability. 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