Citation: *AA v Canada Employment Insurance Commission*, 2022 SST 642

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	A. A.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated March 23, 2022 (GE-22-417)

Tribunal member:	Pierre Lafontaine
Decision date:	July 15, 2022
File number:	AD-22-330

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 September 27, 2020 through to April 30, 2021, because she 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 did not demonstrate a sincere desire to go back to work and that she did not make enough efforts to find a suitable job. It found that the Claimant set personal conditions that might have unduly limited her chances of going back to work. The General Division concluded that she 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 several errors of fact.

[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 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.

[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 she was looking for work but the pandemic made her research difficult since no jobs were available. She submits that she wanted to submit her job search to the Commission but fell sick with COVID-19. The agent did not give her a deadline to do so. The Claimant submits that while it is true that she would not have dropped her school, she was willing to work

more hours to secure a job. She does not understand why the Commission would give a civilian employment insurance during a global pandemic and crisis without asking the necessary questions beforehand.

[12] The Claimant established a claim for employment insurance benefits effective September 27, 2020.

[13] The law says that the Commission may, at any point after benefits are paid to a claimant, verify that the claimant is entitled to those benefits by requiring proof that they were capable of and available for work on any working day of their benefit period.[1]

[14] This provision, which is part of the Temporary Measures to Facilitate Access to Benefits during the pandemic, acknowledges that during the pandemic, verification of entitlement may not have been possible at the time benefits are initially paid, and to allow for subsequent verification even after benefits have been paid.

[15] I note that the provision was in force when the Claimant applied for EI benefits.[2]

[16] During an initial interview by the Commission, the Claimant stated that she attended a non-referred full-time training from 10/09/2020 until 30/04/2021. The course name is Law and society and the cost was about $9000 per year. The Claimant declared that during the fall semester, she spent about 25 hours per week in her studies including the time she spent on research and assignments. She went to school Mondays to Fridays and she was obligated to attend any scheduled classes. She stated that she would finish her course and was not willing to accept a full-time job.[3]

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[1] See section 153.161 of the *Employment Insurance Act*.
[2] See section 153.196 of the *Employment Insurance Act*.
[3] See GD3-32.

[17] During the winter semester, the Claimant had one class but had to do research because she was on different committees. She spent 20 hours a week on her studies. The Claimant stated that her focus was to finish school.[4]

[18] 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.[5]

[19] 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.[6]

[20] 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.[7]

[21] The evidence shows that the Claimant was a full-time student from 10/09/2020 until 30/04/2021. She spent about 20-25 hours per week in her studies including the time she spent on research and assignments. The Claimant stated on numerous occasions that she was not willing to give up her courses to take a full-time job. Both of those restricted him from obtaining full-time jobs during regular business hours, Monday to Friday.

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[4] See GD3-51.
[5] Section 18(1) (a) of the *Employment Insurance Act*.
[6] *Faucher v Canada (Employment and Immigration Commission)*, A-56-96.
[7] *Canada (Attorney General) v Cloutier*, 2005 FCA 73.

[22] The *Employment Insurance Act* (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.

[23] 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.[8]

[24] 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.

[25] 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.

[26] 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

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

Pierre Lafontaine
Member, Appeal Division

[8] *Duquet v Canada (Attorney General)*, 2008 FCA 313; *Canada (Attorney General) v Gauthier*, 2006 FCA 40; *Bertrand*; A-613-81; CUB 74252A; CUB 68818; CUB 37951; CUB 38251; CUB 25041.