



Citation: *MT v Canada Employment Insurance Commission*, 2022 SST 646

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: M. T.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated April 14, 2022
(GE-22-571)

Tribunal member: Pierre Lafontaine

Decision date: July 14, 2022

File number: AD-22-312

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 EI regular benefits as of September 7, 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 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 from September 7, 2021, to April 19, 2022.

[4] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. The Claimant submits that he has been a part-time student since January 4, 2022, and will continue being a part-time student until August 19, 2022. He puts forward that he should be eligible to receive benefits from January 4, to May 22, 2022, when he started working.

[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 he has been a part-time student since January 4, 2022, and will continue being a part-time student until August 19, 2022. He puts forward that he should be eligible to receive benefits from January 4, to May 22, 2022, when he started working.

[12] The General Division took notice that the Claimant reduced the number of classes he was taking in the January 2022 semester, and that he considered being in school part-time.

[13] During an interview by the Commission, the Claimant stated that for the January 2022 semester, his schedule was Monday 3pm to 5 pm, Tuesdays 12 pm to 2 pm, Wednesdays 4 pm to 6 pm and Thursdays 12 to 1 pm and that he would spend approximately 10 hours per week on homework and studies. He also stated that he was looking for part-time work while in school.¹

[14] The evidence before the General Division shows that the Claimant was attending General Business at Fanshawe College since September 2020. In his application for benefits, the Claimant indicated that his course was considered full-time by the educational institution.² He also stated to the Commission that he did not take any summer breaks and that he was in school the whole time.³

[15] Therefore, the General Division made no reviewable error when it found that the preponderant evidence showed that the Claimant was a full-time student. The mere fact that the Claimant decided to restructure his college school schedule does not make him a part-time student.

[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.⁴

[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

¹ See GD3-25.

² See GD3-13.

³ See GD3-25.

⁴ Section 18(1) (a) of the *Employment Insurance Act*.

- (3) not setting personal conditions that might unduly limit the chances of returning to the labour market.⁵

[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.⁶

[19] The evidence shows that the Claimant was attending college during the January 2022 semester and that his schedule was Monday 3pm to 5 pm, Tuesdays 12 pm to 2 pm, Wednesdays 4 pm to 6 pm and Thursdays 12 to 1 pm. He would also spend approximately 10 hours per week on homework and studies. The Claimant stated on numerous occasions that 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 *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.

[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.⁷

[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.

⁵ *Faucher v Canada (Employment and Immigration Commission)*, A-56-96.

⁶ *Canada (Attorney General) v Cloutier*, 2005 FCA 73.

⁷ *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.

[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