



Citation: *JF v Canada Employment Insurance Commission*, 2022 SST 653

**Social Security Tribunal of Canada
Appeal Division**

Leave to Appeal Decision

Applicant: J. F.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated April 12, 2022
(GE-22-564)

Tribunal member: Janet Lew

Decision date: July 14, 2022

File number: AD-22-318

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, J. F. (Claimant) is appealing the General Division decision. The General Division found that the Claimant was not available for work while going to school. The General Division concluded that the Claimant was therefore disentitled from receiving Employment Insurance benefits that he had already received. This led to an overpayment of benefits.

[3] The Claimant argues that the General Division made important errors about the facts.

[4] Before the Claimant can move ahead with his appeal, I have to decide whether the appeal has a reasonable chance of success.¹ Having a reasonable chance of success is the same thing as having an arguable case.² 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 the Claimant permission to move ahead with his appeal.

Issue

[6] Is there an arguable case that the General Division made factual errors?

¹ 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."

² 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.³

[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 factual errors?

[10] The Claimant argues that the General Division made several factual errors, at paragraphs 2, 20, 31, 38, and 43 of the General Division decision.

– Paragraph 2

[11] The General Division wrote that the Claimant had not shown that he was available for work while in school. The General Division stated its conclusions upfront, before it went into its analysis of the law and the evidence.

[12] The Claimant notes that, when he collected Employment Insurance benefits, there were only six weeks when he was unable to work due to his schooling. During those weeks, he had “in-person school day requirement[s] for the program” that he was taking.⁴ He claims that he was otherwise available for work outside of these six weeks.

[13] The Claimant has to point to a specific factual error, rather than to the conclusions that one might draw from the facts. The Claimant is essentially seeking a

³ See section 58(1) of the DESD Act.

⁴ See Claimant’s Application to the Appeal Division—Employment Insurance, at AD1-4.

reassessment of the General Division's conclusions. He is asking the Appeal Division to look at the evidence again and decide whether he was available, other than for the six weeks when he was unavailable for work. Asking for a reassessment is not an appropriate ground of appeal. I am not satisfied that there is an arguable case on this point.

– **Paragraph 20**

[14] The Claimant argues that the General Division made a factual error at paragraph 20, where it wrote:

The Employer did provide the [Claimant] a letter stating its intent to recall the [Claimant] but did not provide any assurances of an imminent recall. In fact, he would not be called back to work with his Employer until September 10, 2021. This is a period of nearly six months.

[15] The Claimant says that his employer recalled him for work for a few weeks within the six months.

[16] If the Claimant's employer recalled him to work in the close to six months before September 10, 2021, this would be for the timeframe from roughly April 2021 to September 2021.

[17] The evidence shows that the Claimant had worked from June 2020 to late April 2021.⁵ The Claimant has not referred me to any evidence in the hearing file to support his claim. I also do not see any evidence in the hearing file that shows that the Claimant returned to work sometime after late April 2021 and before he resumed working again in September 2021.

[18] I am not satisfied that there is an arguable case that the General Division made a factual error when it wrote that the Claimant's employer did not call him back to work for about six months, leading up to September 2021. There simply was no evidence at the General Division to support such a finding.

⁵ See Record of Employment dated April 30, 2021, at GD2-9 and GD3-17.

– **Paragraph 31**

[19] The Claimant argues that the General Division made a factual error when it found that there was no evidence that he attempted to start a job search after his practicum ended. The General Division noted that the Claimant's practicum ended in December 2021.

[20] The Claimant explains that he did not have to look for work because his current employer recalled him for work. The Claimant has not referred me to any of the evidence in the hearing file and I do not see any evidence on file that shows that the Claimant's employer recalled him for work after his practicum ended in December 2021.

[21] The evidence shows that the Claimant's employer recalled him to work and the Claimant returned to work from September 20, 2021 to October 29, 2021.⁶ However, this was before the Claimant started his practicum.

[22] Indeed, the Claimant does not challenge the General Division's findings that he did not look for work after his practicum ended. The Claimant acknowledges that he did not look for work after his practicum ended.

[23] For this reason, I am not satisfied that there is an arguable case that the General Division made an error that the Claimant did not start a job search after his practicum ended in December 2021.

– **Paragraph 38**

[24] The Claimant argues that the General Division made a factual error when it concluded that he had not made any efforts to find a suitable job. The General Division wrote that the Claimant did not register with job banks, make any applications, or evaluate any possible employment options.

⁶ See Record of Employment dated November 25, 2021, at GD3-32. See also Claimant's letter dated May 8, 2022, at AD1-9, confirming that his employer recalled him from September 20 to October 29, 2021.

[25] The Claimant denies these findings. He claims that he registered with both the Job Bank of Canada and Indeed.⁷ He provided these employment services with his updated resume. They searched for jobs for him. The Claimant says that he received some offers, but says that they “did not fit the work and required income needed to support sending 2 children [sic] back to daycare.”⁸

[26] While the Claimant may have registered with the Job Bank of Canada and Indeed, the General Division did not have this evidence before it. The General Division could only make findings based on the evidence before it. For this reason, I am not satisfied that there is an arguable case that the General Division made a factual error on this point.

[27] Additionally, the Claimant states that he declined some job offers because they did not match what he wanted, in terms of the work and required income. This appears to be “new evidence,” in the sense that the General Division did not have this evidence. Generally, I am unable to consider new evidence, but even if I could consider it, I query how this evidence helps the Claimant. After all, it shows that he placed personal conditions that unduly limited his chances of going back to work.

– **Paragraph 44**

[28] The Claimant argues that the General Division was wrong when it found that his employer laid him off from work. The Claimant denies that his employer laid him off from work. He explains that he lost his employment because of COVID-19 shutdowns.

[29] While that may be so, I am not satisfied that this error raises an arguable case because the factual error has to be one upon which the General Division based its decision.

[30] In the same paragraph, the General Division wrote that the Claimant had a duty to show that he was seeking employment. The General Division focused on whether the

⁷ See Claimant’s letter dated May 8, 2022, at AD1-9 and Claimant’s Application to the Appeal Division—Employment Insurance, at AD1-4.

⁸ See Claimant’s Application to the Appeal Division—Employment Insurance, at AD1-4.

Claimant was available for work. From the General Division's perspective, it did not matter how the Claimant lost his employment, as long as it was through no fault of his own and as long as he was able to show that he was available for work. For that reason, I am not satisfied that there is an arguable case on this point.

The Claimant's options

[31] I do not have any authority to waive or reduce any of the overpayment. In terms of any potential relief, the Claimant can ask the Commission to consider writing off the debt because of undue hardship. He can also contact Canada Revenue Agency's Deb Management Call Centre at 1-866-864-5823 about a repayment schedule.

Conclusion

[32] Permission to appeal is refused. This means that the appeal will not be going ahead.

Janet Lew
Member, Appeal Division