Citation: *EM v Canada Employment Insurance Commission*, 2022 SST 626

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	E. M.
Representative:	Robert Morrissey
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated May 1, 2022 (GE-22-474)

Tribunal member:	Pierre Lafontaine
Decision date:	July 13, 2022
File number:	AD-22-356

Decision

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

Overview

[2] The Respondent, the Canada Employment Insurance Commission (Commission), decided that the Applicant (Claimant) was disentitled from receiving Employment Insurance (EI) regular benefits as of September 8, 2021, because he was taking a training course on his own initiative, and had not proven that he was available for work. 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 show that he wanted to work more hours than he was actually working and that he made sufficient efforts to find a suitable job. It further found that the Claimant attending school unduly limited his chances of returning to work. It concluded that the Claimant did not show that he was capable of, and available for work but unable to find a suitable job as o September 8, 2021.

[4] The Claimant seeks leave to appeal of the General Division's decision to the Appeal Division. He submits that the General Division made an error in law when it concluded that he was not available for work and that the Commission did not have the obligation to give him notice of an impending disentitlement for availability.

[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] In support of his application for leave to appeal, the Claimant submits that the General Division made an error in law when it concluded that he was not available for work and that the Commission did not have the obligation to give him notice of an impending disentitlement for availability.

[12] The Claimant established a claim for EI regular benefits effective August 22, 2021.

[13] The law says that the Commission may, at any point after benefits are paid to a claimant who attends a course, program of instruction or training, 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 notice that the provision was in force when the Claimant established his claim for EI benefits.[2] It does not require that the Commission give prior notice of an impending disentitlement for availability.

[16] Furthermore, the Federal Court of Appeal has established that a warning could be required when a claimant as shown that their efforts to find suitable employment were reasonable.[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] *Canada (Attorney General) v Stolniuk*, A-687-93: The Federal Court of Appeal has clearly took the position that it could not accept that in a clear instance of unavailability, a claimant would be entitled to benefits under the EI Act simply because the Commission would have omitted to give an advance warning.

[17] In the present case, a warning was certainly not necessary since the Claimant initially admitted to the Commission that he had not applied anywhere for work but that he would at the end of the semester.[4] When subsequently asked by the Commission to forward information regarding his job search, he did not respond after several calls by the Commission.[5]

[18] The General Division found that the Claimant's job search efforts were not enough to show that he was making efforts to find a suitable job.

[19] The law 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.

[20] 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]

[21] 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.

[22] After reviewing the docket of appeal, the General Division decision and considering the arguments of the Claimant in support of his request for leave to appeal, I find that the appeal has no reasonable chance of success. The Claimant has not raised a question that could possibly lead to the reversal of the disputed decision.

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[4] See GD3-20.
[5] See GD3-29.
[6] *Bertrand*, A-613-81, CUB 74252A, CUB 68818, CUB 37951, CUB 38251, CUB 25041.

Conclusion

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

Pierre Lafontaine
Member, Appeal Division