Citation: *MP v Canada Employment Insurance Commission*, 2022 SST 802

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	M. P.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated May 30, 2022 (GE-22-809)

Tribunal member:	Pierre Lafontaine
Decision date:	August 24, 2022
File number:	AD-22-413

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 from November 7, 2021, because she was not 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 demonstrate a sincere desire to return to work and that she did not make sufficient efforts to find a job. It further found that the Claimant set personal conditions on the type of job she was looking for. The General Division concluded that the Claimant did not show that she was capable of, and available for work but unable to find a suitable job.

[4] The Claimant seeks leave to appeal of the General Division's decision to the Appeal Division. She submits that she applied to jobs in accordance with her education, training and experience. She submits that she was not able to provide all her work applications because she did not know she had to supply them at the hearing. She also did not know she had to apply for any kind of jobs.

[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* (DESD 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 applied to jobs in accordance with her education, training and experience. She submits that she was not able to provide all her work applications because she did not know she had to supply them at the hearing. She also did not know she had to apply for any kind of jobs.

[12] 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.[1]

[13] 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.[2]

[14] 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.[3]

[15] The General Division found that the Claimant did not demonstrate a sincere desire to return to work and that she did not make sufficient efforts to find a job. It further found that the Claimant set personal conditions on the type of job she was looking for. The General Division concluded that the Claimant did not show that she was capable of, and available for work but unable to find a suitable job.

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[1] Section 18(1) (a) of the *Employment Insurance Act*.
[2] *Faucher v Canada (Employment and Immigration Commission)*, A-56-96.
[3] *Canada (Attorney General) v Cloutier*, 2005 FCA 73.

[16] During an initial interview by the Commission held on December 3, 2021, the Claimant stated that she had not look for other employment following her suspension from her regular job on November 3, 2021.[4]

[17] During her reconsideration interview held on January 7, 2022, the Claimant stated that she had not applied to any jobs yet. She also mentioned that she was waiting for her arbitration with her regular employer to take place on January 20, 2022.[5]

[18] To be entitled to benefits, a claimant must establish their availability for work, and to do this, they must actively 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.[6]

[20] The preponderant 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. The Claimant's job search was clearly insufficient and the evidence shows that she was waiting for the outcome of the arbitration process. A mere statement of availability by the Claimant is not enough to discharge her burden of proof.[7]

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[4] See GD3-21.
[5] See GD3-29.
[6] *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.
[7] *Landry v Canada (Attorney General)*, A-719-91.

[21] I see no reviewable error made by the General Division. The Claimant does not meet the relevant factors to determine availability.

[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 availability. I cannot find any failure by the General Division to observe a principle of natural justice. 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