



[TRANSLATION]

Citation: *CG v Canada Employment Insurance Commission*, 2022 SST 1075

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: C. G.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated
September 12, 2022 (GE-22-1590)

Tribunal member: Pierre Lafontaine

Decision date: October 24, 2022

File number: AD-22-710

Decision

[1] Leave (permission) to appeal is refused. The appeal will not proceed.

Overview

[2] The Respondent (Commission) decided that the Applicant (Claimant) was not entitled to Employment Insurance (EI) regular benefits as of January 17, 2022, because she was not available for work. On reconsideration, the Commission upheld its initial decision. The Claimant appealed the decision to the General Division.

[3] The General Division found that the Claimant wanted to go back to work and that she had made enough efforts to find a job. However, the General Division found that the Claimant had limited her chances of finding a job by refusing to get vaccinated against COVID-19. The General Division decided that the Claimant was not available for work as of January 17, 2022.

[4] The Claimant now seeks leave from the Appeal Division to appeal the General Division decision. She argues that the General Division did not consider her serious efforts to find a temporary job while she was on leave without pay. She says that she was available for work but that she was unable to find a temporary job within her qualifications.

[5] I have to decide whether there is an arguable case that the General Division made a reviewable error based on which the appeal has a reasonable chance of success.

[6] I am refusing leave to appeal because the Claimant has not raised a ground of appeal based on which the appeal has a reasonable chance of success.

Issue

[7] Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

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 the following:

1. The General Division hearing process was not fair in some way.
2. The General Division did not decide an issue 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 at the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove her case; she must instead establish that the appeal has a reasonable chance of success—in other words, that there is arguably a reviewable error based on which the appeal might succeed.

[10] I will grant leave to appeal if I am satisfied that at least one of the Claimant's stated grounds of appeal gives the appeal a reasonable chance of success.

Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

[11] In support of her application for leave to appeal, the Claimant says that the General Division did not consider her serious efforts to find a temporary job while she was on leave without pay. She says that she was available for work but that she was unable to find a temporary job within her qualifications.

[12] To be considered available for work, a claimant has to prove that they are capable of and available for work and unable to find a suitable job.¹

[13] Availability has to be determined by analyzing three factors:

- a) wanting to go back to work as soon as a suitable job is available
- b) expressing that desire through efforts to find a suitable job
- c) not setting personal conditions that might unduly limit the chances of going back to work²

[14] In addition, availability is determined **for each working day** in a benefit period for which the claimant can prove that, on that day, they were capable of and available for work and unable to find a suitable job.³

[15] The General Division acknowledged that the Claimant wanted to go back to work and that she had made enough efforts to find a job.

[16] However, the General Division found that the Claimant had limited her chances of finding a job by refusing to get vaccinated against COVID-19.

[17] While availability implies that a person is motivated by a sincere desire to work, willingness to work is not in itself necessarily synonymous with availability within the meaning of the law.

[18] To decide whether a claimant is available for work, it is necessary to determine whether they are struggling with obstacles that are undermining their willingness to work.⁴

[19] Based on the material before it, the General Division found that, given her vaccination status during the relevant period, the Claimant was in a situation that

¹ See 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.

⁴ *Canada (Attorney General) v Leblanc*, 2010 FCA 60.

prevented her from being available within the meaning of section 18(1)(a) of the *Employment Insurance Act* (EI Act).

[20] Additionally, searching for only a temporary full-time job pending an imminent return to your usual employer does not meet the requirements of section 18(1)(a) of the EI Act.

[21] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for leave to appeal, I find that the appeal has no reasonable chance of success. The Claimant has not raised any issue that could justify setting aside the decision under review.

Conclusion

[22] Leave to appeal is refused. The appeal will not proceed.

Pierre Lafontaine
Member, Appeal Division