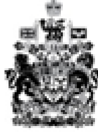

[TRANSLATION]

Citation: *CG v Canada Employment Insurance Commission*, 2022 SST 1405

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 27, 2022 (GE-22-1470)
Tribunal member:	Pierre Lafontaine
Decision date:	December 1, 2022
File number:	AD-22-750

Decision

[1] Permission to appeal is refused. The appeal will not proceed.

Overview

[2] The Applicant (Claimant) applied for regular benefits on October 30, 2021. He initially said that he was studying full-time at CEGEP X. The Respondent (Commission) decided that the Claimant was disentitled to Employment Insurance (EI) regular benefits as of October 18, 2021, because he was taking training on his own initiative and was not available for work. After 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 was studying part-time and that the presumption of non-availability did not apply. It found that the Claimant had not shown a desire to go back to work and that he had not made enough efforts to find a suitable job. The General Division found that the Claimant's availability was unduly limited because of his classes and personal career choices. It concluded that he was not available for work within the meaning of the law.

[4] The Claimant now seeks leave from the Appeal Division to appeal the General Division decision. He argues that the General Division did not take into account that he was prepared to work during his studies. He argues that he applied to several places. The Claimant says that this situation stems from when he initially mistakenly stated that he spent 26 hours a week studying, when really he spent 9 hours.

[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 at least one 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 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 has to be met at the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove his case. Instead, he has to establish that the appeal has a reasonable chance of success. In other words, he must show 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] The Claimant argues that the General Division did not take into account that he was prepared to work during his studies. He argues that he applied to several places. The Claimant says that this situation stems from when he initially mistakenly stated that

he spent 26 hours a week studying, when really he spent 9 hours. Now, he is suffering the consequences of his mistake.

[12] The General Division found that the Claimant was studying part-time and that the presumption of non-availability did not apply.

[13] Even if the presumption of non-availability is rebutted, a claimant has to show that they meet the law's availability-for-work requirements.

[14] 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]

[15] Availability must 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 work[2]

[16] 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]

[17] For the purposes of section 18 of the *Employment Insurance Act* (EI Act), a working day is any day of the week except Saturday and Sunday.[4]

[18] The General Division found that the Claimant had not shown that he wanted to go back to work as soon as a suitable job was available. The General Division found

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[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] See section 32 of the *Employment Insurance Regulations*.

that the Claimant had made some efforts to find a job during the fall 2021 term. However, it found that the Claimant had not searched enough.[5]

[19] The General Division found that the Claimant's availability was unduly limited because of his classes and personal career choices. It considered that the Claimant was not willing to give up his studies to work full-time.

[20] It is well-established case law that availability must be shown 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 EI Act says that, to be entitled to benefits, a claimant has to establish their availability for work and, to do this, they have to **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**.

[22] The overwhelming evidence before the General Division shows that the Claimant was enrolled at CEGEP X. He had to attend classes on Mondays from 2:00 to 5:15 p.m., Tuesdays from 8:50 to 11:35 a.m., and Fridays from 8:00 to 10:00 a.m. and 2:30 to 4:30 p.m. He was available for work only outside his school hours—that is, on weekday evenings and weekends. In addition, he was unwilling to drop his course to accept a full-time job that did not align with his career choice. These two conditions kept him from having jobs during regular working hours, Monday to Friday.

[23] In my view, the evidence supports, on a balance of probabilities, the General Division's findings that the Claimant was not available and unable to find a suitable job from October 18, 2021, because the Claimant prioritized his studies and his availability was unduly limited by the requirements of the program he was taking.

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[5] See GD3-21 and GD3-27: The Claimant referred to two job searches and was not able to provide other examples during the two interviews that the Commission carried out.
[6] *Bertrand*, A-613-81; CUB 74252A; CUB 68818; CUB 37951; CUB 38251; and CUB 25041.

[24] It is important to remember that an appeal to the Appeal Division is not a new hearing where a party can present their evidence again and hope for an outcome different from the one they got before the General Division.

[25] 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 question that could justify setting aside the decision under review.

Conclusion

[26] Permission to appeal is refused. The appeal will not proceed.

Pierre Lafontaine
Member, Appeal Division