



Citation: *IW v Canada Employment Insurance Commission*, 2022 SST 1352

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

**Applicant:** I. W.  
**Representative:** R. W.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated July 19, 2022  
(GE-22-1300)

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**Tribunal member:** Janet Lew  
**Decision date:** November 22, 2022  
**File number:** AD-22-502

## Decision

[1] I am refusing leave (permission) to appeal. The appeal will not be going ahead.

## Overview

[2] The Applicant, I. W. (Claimant) is appealing the General Division decision. The General Division found that the Claimant was not available for work while taking a full-time course. The General Division concluded that the Claimant was therefore disentitled from receiving Employment Insurance benefits.

[3] The Claimant argues that the General Division made an error of law when it assessed whether he was available for work. In particular, the Claimant says that the General Division failed to consider the reasonableness of his job search efforts. He also argues that the General Division should have

[4] Before the Claimant can move ahead with his appeal, I have to decide whether the appeal has a reasonable chance of success.<sup>1</sup> Having a reasonable chance of success is the same thing as having an arguable case.<sup>2</sup> 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, the appeal will not be going ahead.

## Issue

[6] The issues are as follows:

- (a) Is there an arguable case that the General Division failed to consider the reasonableness of the Claimant's job search?

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<sup>1</sup> Under section 58(2) 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."

<sup>2</sup> See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

- (b) Is there an arguable case that the General Division made a mistake about how much weight to assign to some of the evidence?

## 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.<sup>3</sup>

[8] 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 fail to consider the reasonableness of the Claimant's job search?**

[9] The Claimant argues that the General Division made a legal error by failing to consider the reasonableness of his job search efforts. The Claimant says that the General Division should have considered the fact that he resides in a small, remote community with few employment prospects. The Claimant notes that the Government of Canada website says that a reasonable job search takes into account local employment conditions.

[10] The Claimant acknowledges that he did not give evidence of the limited employment opportunities in his community or argue this point at the General Division. He writes:

Now I never mentioned this before but I come from a small town (and still live there) with a population of about 240 people that has very little opportunities in the way of jobs, unlike when you come from a big city with many job opportunities.

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<sup>3</sup> See section 58(1) of the DESD Act. For factual errors, the General Division had to have based its decision on an error that was made in a perverse or capricious manner, or without regard for the evidence before it.

[11] While that may be so, if this evidence and arguments did not arise previously, it cannot be said that the General Division made an error by failing to consider evidence and arguments that it did not have.

[12] The Claimant is clearly asking me to consider this evidence and reassess his claim, but at this stage of the appeal, the Appeal Division is limited to considering whether a claimant has any grounds for appeal. The Appeal Division does not accept new evidence of this nature nor conduct its own assessments based on that new evidence.

[13] Even if this evidence had been before the General Division, it is clear that the General Division determined that the Claimant's job search was still limited. It accepted the evidence from the Respondent, the Canada Employment Insurance Commission (Commission). The Commission had given examples of jobs to which the Claimant could have applied.<sup>4</sup> Those positions were outside the Claimant's community, but were within a reasonable commuting distance.

[14] I am not satisfied that there is an arguable case that the General Division failed to consider the reasonableness of the Claimant's job search. The evidence and arguments about the limited job prospects in the Claimant's community simply did not arise before the General Division. And, on top of that, the General Division accepted that the Claimant could have applied to other jobs.

**Is there an arguable case that the General Division made a mistake about how much weight to assign to some of the evidence?**

[15] The Claimant argues that the General Division should have given more weight to his statement that he would drop his schooling to take a minimum-paying job. The Claimant notes that the General Division preferred his initial answer that he would not have dropped his schooling. The General Division found the Claimant's initial statement more reliable and truthful. But, the Claimant says that he should have been able to

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<sup>4</sup> See General Division decision, at para 33.

retract his initial statement and says the General Division should have accepted that sometimes, early statements could be wrong.

[16] As the trier of fact, the General Division is best placed to assess the evidence before it and to determine the appropriate amount of weight to assign. As the Federal Court held, the “weighing and assessment of evidence lies at the heart of the [General Division’s] mandate and jurisdiction. Its decisions are entitled to significant deference”.<sup>5</sup>

[17] Additionally, the issue of the weight to be assigned to evidence does not fall within any of the listed grounds of appeal.<sup>6</sup>

[18] I am not satisfied that there is an arguable case that on this point.

## **Conclusion**

[19] I am refusing leave (permission) to appeal. The appeal will not be going ahead.

Janet Lew  
Member, Appeal Division

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<sup>5</sup> See *Hussein v Canada (Attorney General)*, 2016 FC 1417.

<sup>6</sup> See section 58(1) of the DESD Act.