



Citation: *BT v Canada Employment Insurance Commission*, 2022 SST 1282

**Social Security Tribunal of Canada  
Appeal Division**

**Leave to Appeal Decision**

**Applicant:** B. T.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated September 26, 2022  
(GE-22-1819)

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**Tribunal member:** Jude Samson

**Decision date:** November 29, 2022

**File number:** AD-22-739

## **Decision**

[1] B. T. is the Claimant in this case. I'm refusing his request for leave (permission) to appeal. The appeal will not proceed.

## **Overview**

[2] The Claimant was out of work from February to June 2022. He applied for Employment Insurance (EI) regular benefits during this time. However, the Canada Employment Insurance Commission (Commission) refused to pay him benefits saying that he hadn't shown his availability for work.

[3] The Claimant appealed the Commission's decision to the Tribunal's General Division. But it dismissed his appeal. The Claimant now wants to appeal the General Division decision to the Tribunal's Appeal Division, but he needs permission for his file to move forward.

[4] I sympathize with the Claimant's circumstances. However, I've found that his appeal has no reasonable chance of success. I have no choice, then, but to refuse permission to appeal.

## **Issue**

[5] The Claimant's application to the Appeal Division targets one issue: Could the General Division have based its decision on an important mistake about the facts of the case when it concluded that the Claimant wasn't available for work?

## **Analysis**

[6] Most Appeal Division files follow a two-step process. This appeal is at step one: permission to appeal.

[7] The legal test the Claimant needs to meet at this step is low: Is there any arguable ground on which the appeal might succeed?<sup>1</sup> If the appeal has no reasonable chance of success, then I must refuse permission to appeal.<sup>2</sup>

[8] To decide this question, I focused on whether the General Division could have made one of the errors that the law says I can consider.<sup>3</sup>

### **The Claimant's appeal has no reasonable chance of success**

[9] To get EI regular benefits, the Claimant had to be available for work and had to make reasonable and customary efforts to find work.<sup>4</sup> The Tribunal assesses availability using three main factors.<sup>5</sup>

[10] In this case, the General Division concluded that the Claimant didn't meet any of the three factors. In particular, the General Division found that the Claimant made minimal efforts to find a new job and restricted his chances of returning to work by waiting to be recalled to his old job.

[11] The Claimant argued that his efforts to find a new job were reasonable in the circumstances of his case. For example,

- his union told him not to look for other work because he'd be recalled shortly;
- he was running his own business; and
- other jobs weren't comparable in terms of wages and benefits.

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<sup>1</sup> This legal test is described in cases like *Osaj v Canada (Attorney General)*, 2016 FC 115 at paragraph 12 and *Ingram v Canada (Attorney General)*, 2017 FC 259 at paragraph 16.

<sup>2</sup> This is the legal test described in section 58(2) of the *Department of Employment and Social Development Act* (DESD Act).

<sup>3</sup> Section 58(1) of the DESD Act lists the relevant errors, formally known as "grounds of appeal."

<sup>4</sup> These requirements come from sections 18(1)(a) and 50(8) of the *Employment Insurance Act*.

<sup>5</sup> These factors were described by the Federal Court of Appeal in *Faucher v Canada (Employment and Immigration Commission)*, 1997 CanLII 4856.

– **The Claimant is rearguing his case**

[12] The General Division clearly understood the Claimant's evidence around his availability. Ultimately, however, it concluded that the Claimant didn't meet the strict availability requirement under the law.

[13] In his application to the Appeal Division, the Claimant doesn't seem to be alleging that the General Division based its decision on an important mistake about the facts of his case. Nor does he say that the General Division misunderstood the relevant legal test.<sup>6</sup>

[14] Instead, the Claimant simply disagrees with the General Division's conclusion. He seems to be hoping that I'll take a fresh look at his case and decide in his favour. However, that's not something that I can do. The Appeal Division's limited role doesn't allow me to intervene just to reweigh the evidence or to settle a disagreement about the application of settled legal principles to the facts of a case.<sup>7</sup>

[15] Similarly, the Tribunal has to decide a person's entitlement to benefits based just on the law, and not on their financial need.

[16] As a result, I've concluded that the Claimant's appeal has no reasonable chance of success.

[17] Aside from the Claimant's arguments, I also reviewed the file, listened to the audio recording of the General Division hearing, and examined the General Division decision.<sup>8</sup> The General Division summarized the law and used evidence to support its decision. I didn't find evidence that the General Division might have ignored or misinterpreted.

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<sup>6</sup> The General Division decision is well supported by the following decisions that discuss the importance of looking for work, even in circumstances like these: *De Lamirande v Canada (Attorney General)*, 2004 FCA 311 and *Canada (Attorney General) v Cornelissen-O'Neill*, A-652-93.

<sup>7</sup> See paragraphs 7 to 11 of the Federal Court of Appeal's decision in *Garvey v Canada (Attorney General)*, 2018 FCA 118.

<sup>8</sup> The Federal Court has said that I must do this in decisions like *Griffin v Canada (Attorney General)*, 2016 FC 874 and *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

## **Conclusion**

[18] I've concluded that the Claimant's appeal has no reasonable chance of success. I have no choice, then, but to refuse permission to appeal. This means that the appeal will not proceed.

Jude Samson  
Member, Appeal Division