Citation: *CL v Canada Employment Insurance Commission*, 2022 SST 1498

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	C. L.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated October 29, 2022 (GE-22-1556)

Tribunal member:	Pierre Lafontaine
Decision date:	December 19, 2022
File number:	AD-22-880

Decision

[1] Leave to appeal is refused. 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 October 4, 2020, to December 17, 2021, because he was not available to 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 show that he wanted to go back to work as soon as a suitable job was available. It found that the Claimant made insufficient efforts to find employment because he was waiting for a recall to his previous job while also studying to improve his qualifications. The General Division found that the Claimant set a personal condition when he decided to await a return to his regular employer. The General Division concluded that the Claimant did not show that he 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. He agrees with the fact that he did not show sufficient job search efforts throughout the layoff period. The Claimant submits that his training was approved and that he was never notified otherwise. He submits that if he had known, he would have willingly dropped his studies and returned to the job market, as he had no other source of income.

[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* 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 his 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 agrees with the fact that he did not show sufficient job search efforts throughout the layoff period. The Claimant submits that his training was approved and that he was never notified otherwise. He followed the proper procedures and submitted the training questionnaire online. The Claimant submits that if he had known, he would have willingly dropped his studies and returned to the job market, as he had no other source of income.

[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 they were capable of and available for work, and unable to obtain suitable employment.[3]

[15] The General Division found that the Claimant did not show that he wanted to go back to work as soon as a suitable job was available. It found that the Claimant made insufficient efforts to find employment because he was waiting for a recall to his previous job while also studying to improve his qualifications.

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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] The General Division further found that the Claimant set a personal condition when he decided to await a return to his regular employer. The General Division concluded that the Claimant did not show that he was capable of, and available for work but unable to find a suitable job.

[17] The law clearly states that to be entitled to benefits, a claimant must establish their availability for work, and to do this, **they must 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.

[18] Recent case law has established that 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.[4]

[19] The evidence supports the General Division's conclusion that the Claimant did not demonstrate that he was available for work but unable to find a suitable job.

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

[21] The Claimant submits that his training was approved and that he was never notified otherwise. The Claimant submits that if he had known, he would have willingly dropped his studies and returned to the job market, as he had no other source of income.

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[4] *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.

[22] The General Division considered that the Claimant believed the Commission had approved his training. He relied on the fact that his "My Canada Service Account (MSCA)" mentioned that his training had been added to his claim for benefits. However, the General Division found that the word "approved" did not appear in the notations that the Claimant cited from his MSCA.

[23] I note that the MSCA notations mention that the claim is under review and that the Commission has received the training questionnaire and continues to review the application for benefits.

[24] The General Division found that the Claimant had already made the personal decision to go back to his former employer notwithstanding his misinterpretation of his MSCA. This personal condition unduly limited his ability to find other suitable work.

[25] Unfortunately, for the Claimant, an appeal to the Appeal Division is not a new hearing where he can resubmit his evidence and hope for a different outcome.

[26] 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

[27] Leave to appeal is refused. This means the appeal will not proceed.

Pierre Lafontaine
Member, Appeal Division