



[TRANSLATION]

Citation: *GM v Canada Employment Insurance Commission*, 2023 SST 207

Social Security Tribunal of Canada Appeal Division

Decision on Extension of Time and Application for Leave to Appeal

Applicant: G. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated
September 27, 2022 (GE-22-1499)

Tribunal member: Pierre Lafontaine

Decision date: February 27, 2023

File number: AD-23-75

Decision

[1] An extension of time to apply to the Appeal Division is granted. However, leave to appeal is not granted. The appeal will not proceed.

Overview

[2] On July 9, 2021, the Applicant (Claimant) applied for Employment Insurance (EI) (regular) benefits. A benefit period was established effective June 20, 2021.

[3] The Canada Employment Insurance Commission (Commission) determined that it could not pay him EI benefits from October 18, 2021, to December 20, 2021, because he said that he was not looking for work. The Commission decided that the Claimant was not available for work. The Claimant appealed the reconsideration decision to the General Division.

[4] The General Division found that the Claimant had not shown a desire to go back to work as soon as a suitable job was available. It found that the Claimant had not shown enough effort to find a suitable job. The General Division found that the Claimant set personal conditions that might have unduly limited his chances of going back to work by waiting to be called back by his usual employer.

[5] The Claimant is now asking the Appeal Division for permission to appeal the General Division's decision. He says that he has been available for work and looking for a job since September 2021.

Issues

[6] The issues are as follows:

- a) Was the application to the Appeal Division late?
- b) If the application was late, should I extend the time to file it?

- c) Is there an arguable case that the General Division made a reviewable error on which the appeal has a reasonable chance of success?

Analysis

The application was made late

[7] The General Division decision was communicated to the Claimant on September 28, 2022. He filed his application for leave to appeal on January 17, 2023. The Claimant's application was late.

I am extending the time for the application

[8] When I am deciding whether to extend the time to file an application, I have to consider whether the Claimant has a reasonable explanation for the delay in filing his application.¹

[9] I find that the Claimant contacted the Tribunal within 30 days of receiving the General Division decision. He said he intended to appeal the General Division decision and asked for an appeal form. As of December 19, 2022, he still had not received the form. He then received the form and filed his application within the 30 days that followed.

[10] In the circumstances, the Claimant has provided a reasonable explanation for the delay. An extension of time to file his application should be granted.

I am not giving permission to appeal to the Claimant

[11] 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.

¹ See section 27(2) of the *Social Security Tribunal Rules of Procedure*.

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.

[12] 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 his appeal has a reasonable chance of success. In other words, that there is arguably some reviewable error upon which the appeal might succeed.

[13] 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.

[14] The Claimant argues that he has been available for work and looking for a job since September 2021.

[15] I note that the Claimant did not attend the hearing before the General Division, although he was duly summoned.

[16] To be considered available for work, a claimant must show that they are capable of and available for work and unable to obtain a suitable job.

[17] Availability must be determined by analyzing three factors:

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

[18] Also, 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.

[19] The General Division found that the Claimant had not shown a desire to go back to work as soon as a suitable job was available. It found that the Claimant had not shown enough effort to find a suitable job. The General Division found that the Claimant set personal conditions that might have unduly limited his chances of going back to work by waiting to be called back by his usual employer.

[20] The General Division gave more weight to the Claimant's initial statements that he was a seasonal worker and not looking for work during the months he was not working. It considered that the Claimant had not provided concrete examples of his job search efforts.

[21] The General Division found that the Claimant's availability was unduly limited because he was waiting to go back to work for his usual employer.

[22] The *Employment Insurance Act* (EI Act) says that to be entitled to benefits, a claimant must establish their availability for work and, to do this, they have to actively look for work. No matter how little chance of success the Claimant feels a job search may have, the law is designed so that only those who are genuinely unemployed and actively looking for work receive benefits. A claimant must establish their availability for work for each working day in a benefit period and that availability must not be unduly limited.

[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, to December 20, 2021. This is because the Claimant was not actively looking for a job and his availability was unduly restricted by his choice to wait to be called back by his usual employer.

[24] It may have been convenient for the Claimant to wait for his usual employer to call him back, but that is not enough to prove his availability for work within the meaning of the EI Act.

[25] Before closing, I reiterate that an appeal to the Appeal Division is not a new hearing where you can resubmit your evidence to get a favourable decision. This is not the role of the Tribunal's Appeal Division.

[26] 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

[27] An extension of time to apply to the Appeal Division is granted.

[28] Permission to appeal is not granted. This means that the appeal will not proceed.

Pierre Lafontaine
Member, Appeal Division