



Citation: *JP v Canada Employment Insurance Commission*, 2023 SST 311

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: J. P.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated December 29, 2022
(GE-22-2513)

Tribunal member: Pierre Lafontaine

Decision date: March 20, 2023

File number: AD-23-166

Decision

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

Overview

[2] The Applicant (Claimant) was not able to work because of his broken toe. The Claimant then applied for Employment Insurance (EI) sickness benefits.

[3] To be able to receive EI sickness benefits, a claimant must “otherwise be available for work.” In other words, the Claimant’s injury must be the only reason why he is not available for work.

[4] The Respondent (Commission) determined that the Claimant would not have been otherwise available for work because he refused to declare his vaccination status. After an unsuccessful reconsideration, the Claimant appealed to the General Division.

[5] The General Division found that the Claimant wanted to go back to work and that he made sufficient efforts to find a job. However, it found that the Claimant set personal conditions that unduly limited her chances of returning to the labour market by refusing to disclose his vaccination status. The General Division concluded that the Claimant was not available to work under the law.

[6] The Claimant seeks leave to appeal of the General Division’s decision to the Appeal Division. The Claimant submits that he had a broken toe and could not find a job because of his handicap. He had to wait for his health to improve.

[7] I must decide whether the Claimant has raised some reviewable error of the General Division upon which the appeal might succeed.

[8] I refuse leave to appeal because the Claimant’s appeal has no reasonable chance of success.

Issue

[9] Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

Analysis

[10] 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.

[11] 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.

[12] Therefore, before I can grant leave to appeal, 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?

[13] The Claimant submits that he had a broken toe and could not find a job because of his handicap. He had to wait for his health to improve.

[14] The General Division found that the Claimant wanted to go back to work and that he made sufficient efforts to find a job. It found that the Claimant set personal conditions that unduly limited his chances of returning to the labour market by refusing to disclose his vaccination status. The General Division concluded that the Claimant was not otherwise available to work under the law.

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

[16] 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.

[17] Furthermore, availability is determined for each working day in a benefit period for which the claimant can prove that on that day he was capable of and available for work, and unable to obtain suitable employment.

[18] The General Division found that the Claimant set a personal condition that might unduly limit his chances of returning to the labour market by choosing not to disclose his vaccination status. The Claimant testified that he did not get positive answers; no one was hiring because of his lack of vaccine. The General Division found that the Claimant's vaccination status was the deciding factor in not obtaining some of the jobs that were offered.

[19] I see no reviewable error made by the General Division. The evidence supports its conclusion that the Claimant did not demonstrate that he was otherwise available for work under the *Employment Insurance Act*.

[20] 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 determined that the Claimant was not otherwise available for work under the EI Act. I find that the appeal has no reasonable chance of success on the issue of availability.

Conclusion

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

Pierre Lafontaine
Member, Appeal Division