



Citation: *RC v Canada Employment Insurance Commission*, 2023 SST 495

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: R. C.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated December 9, 2022
(GE-22-2517)

Tribunal member: Melanie Petrunia

Decision date: April 24, 2023

File number: AD-23-53

Decision

[1] Leave (permission) to appeal is refused. The appeal will not proceed.

Overview

[2] The Applicant, R. C. (Claimant), was dismissed from his job and applied for employment insurance (EI) regular benefits. The Respondent, the Canada Employment Insurance Commission (Commission) decided that he wasn't available for work and was disentitled from receiving benefits.

[3] The Claimant appealed this decision to the Tribunal's General Division. The General Division dismissed his appeal. It found that the Claimant did not prove that he was available for work because he did not make enough efforts to find a job and he set personal conditions that limited his chances of going back to work.

[4] The Claimant is now asking to appeal the General Division decision to the Tribunal's Appeal Division. However, he needs permission for his appeal to move forward.

[5] I have to decide whether there is some reviewable error of the General Division on which the appeal might succeed. I am refusing leave to appeal because the Claimant's appeal has no reasonable chance of success.

Issue

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

I am not giving the Claimant permission to appeal

[7] The legal test that the Claimant needs to meet on an application for leave to appeal is a low one: Is there any arguable ground on which the appeal might succeed?¹

[8] To decide this question, I focused on whether the General Division could have made one or more of the relevant errors (or grounds of appeal) listed in the *Department of Employment and Social Development Act* (DESD Act).²

[9] An appeal is not a rehearing of the original claim. Instead, I must decide whether the General Division:

a) failed to provide a fair process;

b) failed to decide an issue that it should have, or decided an issue that it should not have;

c) based its decision on an important factual error;³ or

d) made an error in law.⁴

[10] Before the Claimant can move on to the next stage of the appeal, I have to be satisfied that there is a reasonable chance of success based on one or more of these grounds of appeal. A reasonable chance of success means that the Claimant could argue his case and possibly win. I should also be aware of other possible grounds of appeal not precisely identified by the Claimant.⁵

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

² DESD Act, s 58(2).

³ The language of section 58(1)(c) actually says that the General Division will have erred if it bases its decision on a finding of fact that it makes in a perverse or capricious manner or without regard for the material before it. The Federal Court has defined perverse as “willfully going contrary to the evidence” and defined capricious as “marked or guided by caprice; given to changes of interest or attitude according to whim or fancies; not guided by steady judgment or intent” *Rahi v Canada (Minister of Citizenship and Immigration)* 2012 FC 319.

⁴ This paraphrases the grounds of appeal.

⁵ *Karadeolian v Canada (Attorney General)*, 2016 FC 615; *Joseph v Canada (Attorney General)*, 2017 FC 391.

– **The General Division decision**

[11] The General Division considered the three factors that a claimant has to prove to show that they are capable of and available for work but unable to find a suitable job:

- a) A desire to return to work as soon as a suitable job is available;
- b) Making efforts to find a suitable job; and
- c) Not setting personal conditions that unduly limit the chances of returning to work.⁶

[12] The General Division considered the Claimant's conduct and attitude when looking at each of these factors.⁷ It found that the Claimant had a desire to return to work as soon as he found a suitable job.⁸ However, it found that the Claimant did not make enough efforts to find a suitable job and set personal conditions which limited his chancing of returning to work.

[13] The General Division noted that the Claimant had been employed as a pharmacy technician. He was dismissed from his job for failing to comply with his employer's vaccination policy.⁹ The Claimant's efforts to find a job included regularly reviewing online postings. He said that he didn't apply for jobs he saw because they were not suitable.¹⁰

[14] The Commission had provided a list of jobs in the Claimant's area for pharmacy workers. The General Division considered the Claimant's position that these jobs were not suitable for him. He argued that the jobs were at a lower salary than he had been earning, or required vaccination, or were a far commute.¹¹

⁶ General Division decision at para 12.

⁷ General Division decision at para 13.

⁸ General Division decision at para 18.

⁹ General Division decision at para 15.

¹⁰ General Division decision at para 20.

¹¹ General Division decision at para 21.

[15] The General Division found that the Claimant's efforts did not demonstrate that he was trying to find work as soon as possible because he did not apply for any of the available positions.¹²

[16] The General Division also found that the Claimant imposed personal conditions that unduly limited his chances of returning to work. The Claimant was not vaccinated against COVID-19 and was only able to apply to jobs that did not have vaccination as a requirement.¹³

[17] The Claimant did not want to be vaccinated for religious reasons. The General Division took this into consideration and found that a good personal reason for imposing a condition is not sufficient. It cited case law from the Federal Court of Appeal and found that the Claimant's choice not to be vaccinated was a personal condition that he imposed which unduly limited his chances of returning to work.¹⁴

– **No arguable case that the General Division erred**

[18] In his application for leave to appeal, the Claimant did not specify which error he believes the General Division made. He argues that there was a failure to accommodate his religious beliefs. This argument does not give rise to arguable case that the General Division made any reviewable errors.

[19] The General Division properly stated the law concerning availability. It applied the proper legal test. The General Division took into consideration all of the relevant facts when making its determinations.

[20] The General Division acknowledged the Claimant's religious reasons for not getting vaccinated. However, it found that the Claimant imposed a personal condition that limited his chances of returning to work. It explained why the Claimant's reasons for not being vaccinated didn't impact on the finding that this was a personal condition he had imposed.

¹² General Division decision at para 22.

¹³ General Division decision at para 23.

¹⁴ General Division decision at para 26.

[21] The General Division also found that the Claimant did not make enough efforts to find suitable work because he did not apply for available jobs. The facts support these findings by the General Division.

[22] There is no arguable case that the General Division failed to accommodate the Claimant's religious beliefs or failed to take his beliefs into consideration.

[23] Aside from the Claimant's argument, I have also considered the grounds of appeal. The Claimant has not pointed to any procedural unfairness on the part of the General Division and I see no evidence of procedural unfairness. There is no arguable case that the General Division made an error of jurisdiction. I have not identified any errors of law and there is no arguable case that the General Division based its decision on an important mistake about the facts.

[24] The Claimant has not identified any errors of the General Division upon which the appeal might succeed. As a result, I am refusing leave to appeal.

Conclusion

[25] Permission to appeal is refused. This means that the appeal will not proceed.

Melanie Petrunia
Member, Appeal Division