



Citation: *RB v Canada Employment Insurance Commission*, 2023 SST 737

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: R. B.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated February 3, 2023
(GE-22-4265)

Tribunal member: Melanie Petrunia

Decision date: June 8, 2023

File number: AD-23-222

Decision

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

Overview

[2] The Applicant, R. B. (Claimant), worked as a school bus driver. Her contract ended in June 2022. For health reasons, the Claimant could not return to her job in September. She applied for employment insurance (EI) sickness benefits on October 4, 2022, but later said this was a mistake and she wanted regular benefits.

[3] The Respondent, the Canada Employment Insurance Commission (Commission), decided that the Claimant was not entitled to benefits from October 3, 2022 to October 28, 2022. The Commission said that the Claimant was not available for work until October 28, 2022, when she started looking for a job.

[4] The Claimant appealed this decision to the Tribunal's General Division. The General Division dismissed her appeal. It agreed with the Commission that the Claimant did not start looking for work until October 28, 2022 and could not prove her availability before that date.

[5] The Claimant now wants to appeal the General Division decision. However, she needs permission for her appeal to move forward. I have to decide whether there is some reviewable error of the General Division on 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 any reviewable error of the General Division upon which the appeal might succeed?

I am not giving the Claimant permission to appeal

[8] 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

[9] 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

[10] 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

[11] 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 her 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**

[12] The General Division noted that the Commission disentitled the Claimant under two different sections of the EI Act.⁶ This meant that she had to prove that she was making reasonable and customary efforts to find work and that she was capable of and available for work but unable to find a suitable job. It set out the three factors that a claimant has to prove to show availability:

- 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.⁷

[13] The General Division then reviewed the evidence. It summarized what the Claimant told the Commission, and the testimony that she gave at the hearing. Based on this evidence, it found that the Claimant did not make any efforts to find a job before October 28, 2022.⁸

[14] The Claimant originally applied for sickness benefits. She testified that she was recovering from a stroke and possibly COVID around this time.⁹ She was asked for medical information which she wasn't able to provide at the time. The Claimant asked to switch her application to regular benefits.¹⁰

[15] The Claimant repeatedly told the Commission that she was not looking for work. The General Division noted that it was not clear that the Claimant understood that she had to be looking for work in order to be eligible for regular benefits. However, the

⁶ General Division decision at para 13.

⁷ General Division decision at para 12.

⁸ General Division decision at para 15.

⁹ General Division decision at para 16.

¹⁰ General Division decision at para 17.

General Division accepted that the Commission clearly explained to the Claimant the difference between regular and sickness benefits.¹¹

[16] The General Division found that the Claimant was not looking for work until she applied for a job on October 28, 2022. It summarized all the evidence and clearly explained its reasons for making this finding. The General Division explained why it found the Claimant's testimony credible, but not reliable.¹²

[17] The General Division also considered the three medical notes that the Claimant had submitted. It found that these documents did not help prove that the Claimant was available for work before October 28, 2022.¹³

[18] Because it found that the Claimant did not make any efforts to find a job before October 28th, the General Division did not go through the legal test for availability step-by-step.¹⁴ It found that the Claimant could not demonstrate that she made reasonable and customary efforts to find work. It also found that she could not show that she was capable of and available for work but unable to find a suitable job.¹⁵

There is no arguable case that the General Division erred

[19] The Claimant did not say what errors she believed the General Division made in her application for leave to appeal. The Tribunal wrote to her to ask for more information about the possible errors, but the Claimant did not provide further explanation about the errors that she thinks the General Division made. She said that she has been waiting a long time to get her employment insurance and is in financial difficulties because of the delay.

[20] I sympathize with the Claimant's circumstances. The General Division stated in its decision that the outcome is unfortunate for the Claimant because she might have

¹¹ General Division decision at paras 18 and 19.

¹² General Division decision at para 24.

¹³ General Division decision at paras 26 to 28.

¹⁴ General Division decision at para 30.

¹⁵ General Division decision at para 31.

been eligible for sickness benefits before October 28, 2022.¹⁶ I agree that the situation is unfortunate.

[21] My role is limited to determining whether there is an arguable case that the General Division made any errors. The Claimant did not identify any errors and I have reviewed the record to determine whether there are any identifiable errors.

[22] 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.

[23] 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

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

Melanie Petrunia
Member, Appeal Division

¹⁶ General Division decision at para 5.