



[TRANSLATION]

Citation: *MM v Canada Employment Insurance Commission*, 2023 SST 899

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: M. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated
April 14, 2023(GE-22-3876)

Tribunal member: Pierre Lafontaine

Decision date: July 10, 2023

File number: AD-23-393

Decision

[1] Permission to appeal is not granted. The appeal will not proceed.

Overview

[2] From August 12, 2021, to April 28, 2022, inclusive, and from May 5, to May 20, 2022, inclusive, the Applicant (Claimant) worked as an administrative officer at X (X).

[3] On May 24, 2022, she made an initial claim for EI regular benefits. A benefit period was established effective May 22, 2022.

[4] On August 16, 2022, the Canada Employment Insurance Commission (Commission) told her that it could not pay her EI benefits from May 23, 2022, because she was only willing to accept work as an administrative officer in the area of vaccination and to work for X. The Commission decided that the Claimant was not available for work. She appealed the reconsideration decision to the General Division.

[5] 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 her chances of going back to work by remaining available only to her usual employer and to a limited extent.

[6] The Claimant now seeks permission from the Appeal Division to appeal the General Division decision. She says that he [*sic*] was still available for work in her field since May 23, 2022.

Issue

[7] Did the General Division make a reviewable error based on which the appeal has a reasonable chance of success?

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 the following:

1. The General Division hearing process was not fair in some way.
2. The General Division did not decide an issue 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 permission 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 at the hearing of the appeal on the merits. At the permission to appeal stage, the Claimant does not have to prove her case; she must instead establish that the appeal has a reasonable chance of success. In other words, she must show that there is arguably a reviewable error based on which the appeal might succeed.

[10] I will give permission 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.

[11] The Claimant argues that she was available for work in her field from May 23, 2022. She says that she was always available for work for her employer X and that her employer never asked her to work in another sector.

[12] 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.

[13] 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 chances of going back to work

[14] 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 obtain a suitable job.

[15] 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 her chances of going back to work by remaining available only to her usual employer and to a limited extent.

[16] 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 must **actively look for work**. A claimant must establish their availability for work for each working day in a benefit period and that availability must not be unduly limited.

[17] The Claimant admitted that she is limiting herself to working for her usual employer and is not looking for other suitable jobs.¹

[18] I am of the view that the evidence supports, on a balance of probabilities, the General Division's conclusion that the Claimant was not available and unable to obtain a suitable job from May 23, 2022, since the Claimant was not actively looking for a job and her availability was unduly restricted by her personal choice to work only for her usual employer.

¹ See GD3-15 and GD3-21.

[19] It may be appropriate for the Claimant to only work for her usual employer. But, that is not enough to show that she was available for work within the meaning of the EI Act.

[20] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for permission 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

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

Pierre Lafontaine
Member, Appeal Division