



Citation: *MJ v Canada Employment Insurance Commission*, 2023 SST 764

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

**Applicant:** M. J.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated March 20, 2023  
(GE-22-1840)

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**Tribunal member:** Pierre Lafontaine

**Decision date:** June 14, 2023

**File number:** AD-23-333

## Decision

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

## Overview

[2] The Applicant's (Claimant) employment came to an end. On December 7, 2021, he applied for EI benefits. The Canada Employment Insurance Commission (Commission) decided that he voluntarily left (or chose to quit) his job without just cause, so it couldn't pay him benefits.

[3] The Commission also decided that the Claimant did not show that he was available for work from December 6, 2021, because he was taking a training course on his own initiative. After an unsuccessful reconsideration, the Claimant appealed to the General Division.

[4] The General Division found that the Claimant voluntarily left his job. It found that the employer wanted the Claimant to return to work but that the Claimant acted in a way that brought his employment to an end. The General Division found that he was dissatisfied with his workplace. It found that the Claimant could have presented himself at the workplace to discuss the situation with his employer. He could have set a date to return to work. He could have responded to his employer with details about the situations he felt needed to be addressed and that weren't being handled by his manager. The General Division found that the Claimant was not interested in those alternatives. It concluded that the Claimant did not have just cause to leave his employment.

[5] The General Division also concluded that the Claimant was not available to work because he was not making enough efforts to find a suitable job and limiting his job search to part-time work, that could be done around his school commitments, and that was related to his field of study.

[6] The Claimant seeks leave to appeal of the General Division's decision to the Appeal Division. The Claimant submits that he never quit his job. He submits that the General Division cannot consider that he had reasonable alternatives to act like he did because they have not, nor will ever, experience the same circumstances as he did. He has been working and looking for work during the time after the employer decided to terminate him.

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

[8] I am refusing 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?**

**Voluntary leave**

[13] The Claimant submits that he never quit his job. He submits that the General Division cannot consider that he had reasonable alternatives to act like he did because they have not, nor will ever, experience the same circumstances as he did.

[14] The General Division found that the Claimant voluntarily left his job. It found that the employer wanted the Claimant to return to work but that the Claimant acted in a way that brought his employment to an end. The General Division found that he was dissatisfied with his workplace.

[15] The General Division found that the Claimant could have presented himself at the workplace to discuss the situation with his employer. He could have set a date to return to work. He could have responded to his employer with details about the situations he felt needed to be addressed and that weren't being handled by his manager. The General Division found that the Claimant was not interested in those alternatives. It concluded that the Claimant did not have just cause to leave his employment.

[16] As stated by the General Division, and even though the Claimant disagrees, the evidence supports that he initiated the separation of the employee/employer relationship when he refused to return to work after an authorized leave of absence.

[17] The Claimant wanted to extend his authorized leave to concentrate on his thesis but did not give the employer a return date.<sup>1</sup> Had he returned to work when requested by the employer, the Claimant would still have his job.

[18] A reasonable solution would have been for the Claimant to provide a date of return to the employer and return to work after the end of his authorized leave.

[19] I see no reviewable error made by the General Division. The General Division's conclusion is supported by the evidence and case law. I have no choice but to find that the appeal on this issue has no reasonable chance of success.

### **Availability**

[20] The Claimant submits he has been working and looking for work during the time after the employer decided to terminate him.

[21] To be considered available for work, a claimant must show that he is capable of, and available for work and unable to obtain suitable employment.

[22] 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.<sup>2</sup>

[23] The *Employment Insurance Act* (EI Act) clearly states that to be entitled to benefits, a claimant must establish their availability for work, and to do this, they must look for work. A claimant must establish their availability for work for each working day in a benefit period and this availability must not be unduly limited.

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<sup>1</sup> See GD2-38.

<sup>2</sup> *Faucher v Canada (Employment and Immigration Commission)*, 1997 CanLII 4856 (FCA) (A-56-96).

[24] It is also well established that availability must be demonstrated during regular hours for every working day and cannot be restricted to irregular hours resulting from a school schedule that significantly limits availability.

[25] The General Division found that the Claimant did not want to go back to work and did not make enough efforts to find a suitable job. It found that the Claimant limited his chances to going back to work because he was only looking for part-time work that could be done around his school commitments, and he was limiting his job search to jobs related to his field of study.

[26] In his reply to the employer's letter requesting his return to work, the Claimant indicated that his entire attention was dedicated to writing his thesis.<sup>3</sup> During an interview by the Commission held on March 24, 2022, the Claimant stated that he requested from his employer to work one day a week and he reiterated that he was concentrated on his schoolwork. He further stated that he would be available for full-time work only after he finished his PhD.<sup>4</sup>

[27] The evidence supports the General Division's conclusion that the Claimant did not demonstrate that he was available for work but unable to find a suitable job.

[28] I see no reviewable error made by the General Division. The Claimant does not meet the relevant factors to determine availability. Although the academic efforts of the Claimant deserve praise, this does not eliminate the requirement to show availability within the meaning of the EI Act.

[29] I find that the General Division considered the evidence before it and properly applied the *Faucher* factors in determining the Claimant's availability. I have no choice but to find that the appeal has no reasonable chance of success on this issue.

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<sup>3</sup> See GD2-38.

<sup>4</sup> See GD3-30.

## **Conclusion**

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

Pierre Lafontaine  
Member, Appeal Division