Citation: *BZ v Canada Employment Insurance Commission*, 2023 SST 948

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	B. Z.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated March 29, 2023 (GE-22-3688)

Tribunal member:	Neil Nawaz
Decision date:	July 24, 2023
File number:	AD-23-381

Decision

[1] I am refusing the Claimant permission to appeal because she does not have an arguable case. This appeal will not be going forward.

Overview

[2] The Claimant, B. Z., was employed as a personal support worker for a regional hospital. On February 17, 2022, the hospital suspended the Claimant from work after she refused to get vaccinated for COVID-19. The Canada Employment Insurance Commission (Commission) decided that it didn't have to pay the Claimant EI benefits because her failure to comply with her employer's vaccination policy amounted to misconduct. It also decided that the Claimant was disentitled from receiving EI benefits because she wasn't available for work from April 11, 2022 to July 15, 2022.

[3] This Tribunal's General Division dismissed the Claimant's appeal. It agreed with the Commission that the Claimant did not make herself available for work after her suspension.

[4] The Claimant is now asking for permission to appeal the General Division's decision. She alleges that the General Division was wrong to find that she was unavailable for work. She says that she was actively looking for jobs but was unable to apply for 100 percent of them because of her choice not to get vaccinated.

Issue

[5] There are four grounds of appeal to the Appeal Division. An appellant must show that the General Division

- proceeded in a way that was unfair;
- acted beyond its powers or refused to use them;
- interpreted the law incorrectly; or

- based its decision on an important error of fact.[1]

[6] Before the Claimant can proceed, I have to decide whether her appeal has a reasonable chance of success.[2] Having a reasonable chance of success is the same thing as having an arguable case.[3] If the Claimant doesn't have an arguable case, this matter ends now.

[7] At this preliminary stage, I have to decide whether there is an arguable case that the General Division erred when it found that the Claimant failed to make herself available for work.

Analysis

[8] I have reviewed the General Division's decision, as well as the law and the evidence it used to reach that decision. I don't see an arguable case that the General Division erred in finding that the Claimant failed to make herself available for work.

– The General Division accurately summarized the law around availability

[9] Under section 18(1)(a) of the EI Act, claimants are not entitled to benefits unless they are capable of and available for work. The Federal Court of Appeal says that this requires decision-makers to consider whether a claimant:

- wanted to return to work as soon as a suitable job was available;
- tried to do so by making efforts to find a suitable job; and
- set unreasonable conditions that limited their chances of finding a job.[4]

[10] I am satisfied that the General Division accurately summarized the law around availability.

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[1] See *Department of Employment and Social Development Act* (DESDA), section 58(1).
[2] See DESDA, section 58(2).
[3] See *Fancy v Canada (Attorney General)*, 2010 FCA 63.
[4] See *Faucher v Canada Employment and Immigration Commission*, 1997 CanLII 4856 (FCA).

– The General Division did not ignore or mischaracterize the evidence around the Claimant's attempt – or lack of thereof – to find another job

[11] The General Division reviewed the Claimant's written and oral submissions and, after applying the law to the available evidence, came to the following findings:

- The Claimant wanted to go back to work;
- The Claimant made an reasonable effort to look for jobs within her capabilities and qualifications;
- However, the Claimant unduly limited her chances of getting a job by (i) refusing to commute more than 30-40 minutes and (ii) refusing to get vaccinated (at a time when most employers required it).

[12] These findings appear to accurately reflect the Claimant's testimony, as well as the documents on file. I see no reason to interfere with the General Division's conclusion that the Claimant was capable of work but unavailable for work.

– Claimants cannot succeed by rearguing their case

[13] The Claimant's argument at the Appeal Division mirrors the argument that she made at the General Division. She insists that she was available for work.

[14] However, the General Division heard this argument and, after applying the law to the evidence, decided that it had no merit.

[15] To succeed at the Appeal Division, appellants must do more than simply disagree with the General Division. An appellant must also identify specific errors that the General Division made in coming to its decision and explain how those errors, if any, fit into the one or more of the four grounds of appeal permitted under the law. A hearing at the Appeal Division is not meant to be a "redo" of the hearing at the General Division.

[16] In its role as finder of fact, the General Division is entitled to some leeway in how it chooses to assess the evidence before it.[5] In this case, the General Division examined what the Claimant did after losing her job and concluded that she was unavailable for work. In the absence of a significant legal or factual error, I see no reason to second-guess this finding.[6]

Conclusion

[17] For the above reasons, I am not satisfied that this appeal has a reasonable chance of success. Permission to appeal is therefore refused. That means the appeal will not proceed.

Neil Nawaz
Member, Appeal Division

[5] See *Simpson v Canada (Attorney General)*, 2012 FCA 82.
[6] Among the grounds of appeal for an EI decision is an erroneous finding of fact "made in a perverse or capricious manner or without regard for the material." See section 58(1)(c) of DESDA.