



Citation: *NK v Canada Employment Insurance Commission*, 2023 SST 1038

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: N. K.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated March 13, 2023
(GE-22-3886)

Tribunal member: Janet Lew

Decision date: August 2, 2023

File number: AD-23-334

Decision

[1] Leave (permission) to appeal is refused. The appeal will not be going ahead.

Overview

[2] The Applicant, N. K. (Claimant), is appealing the General Division decision. The General Division dismissed the Claimant's appeal. It found that the Claimant had not shown that she was available for work while in school. Because she was found to have been unavailable for work, she was disentitled from receiving Employment Insurance benefits.

[3] The Claimant argues that the General Division failed to follow the rules of procedural fairness.

[4] Before the Claimant can move ahead with her appeal, I have to decide whether the appeal has a reasonable chance of success. In other words, there has to be an arguable case.¹ If the appeal does not have a reasonable chance of success, this ends the matter.²

[5] I am not satisfied that the appeal has a reasonable chance of success. Therefore, I am not giving permission to the Claimant to move ahead with her appeal.

Issue

[6] Is there an arguable case that the General Division failed to follow the rules of procedural fairness?

I am not giving the Claimant permission to appeal

[7] The Appeal Division must grant permission to appeal unless the appeal has no reasonable chance of success. A reasonable chance of success exists if the General

¹ *Fancy v Canada (Attorney General)*, 2010 FCA 63.

² Under section 58(2) of the *Department of Employment and Social Development (DESD) Act*, I am required to refuse permission if I am satisfied "that the appeal has no reasonable chance of success."

Division may have made a jurisdictional, procedural, legal, or certain type of factual error.³

[8] For factual errors, the General Division had to have based its decision on an error that it made in a perverse or capricious manner, or without regard for the evidence before it.

Is there an arguable case that the General Division failed to follow the rules of procedural fairness?

[9] The Claimant argues that the General Division failed to follow the rules of procedural fairness. However, she did not identify which rules the General Division might have failed to follow, nor did she identify how the General Division might have breached the rules. For instance, she does not suggest that the General Division member or, for that matter, the Social Security Tribunal (Tribunal) failed to give her any documents or adequate notice of the hearing, or that it somehow deprived her of any opportunity to fairly present her case.

[10] As the Claimant did not provide any details to support her application to the Appeal Division, the Tribunal reached out to the Claimant for more information. The Tribunal attempted to contact the Claimant as follows:

- By email letters dated April 25, 2023 and July 4 and 18, 2023 and
- By telephone on April 27, 28, May 3, and 4, and on July 10, 11, and 12, 2023

[11] The Claimant responded on April 28, 2023, by email, advising that she wished to be contacted by telephone to further discuss the matter. This was the Claimant's only response. The Tribunal continued to try to reach the Claimant after April 28, 2023.

[12] The Tribunal asked the Claimant for details about the reasons for her appeal. In its most recent letter, the Tribunal told the Claimant that, unless she responded with

³ See section 58(1) of the DESD Act.

details about her appeal, the Appeal Division would assess her application based on the materials already on file.

[13] Apart from the Claimant's response on April 28, 2023, there have been no other responses from her. She has yet to explain how the General Division failed to follow the rules of procedural fairness. She also has not suggested that the General Division might have made any legal or factual errors.

[14] A review of the file indicates that the Tribunal provided copies of all relevant documents to the Claimant, that it gave her reasonable notice of the hearing, and that it provided her with adequate notice.

[15] The file also indicates that the General Division identified the issues and the requirements that the Claimant had to meet to qualify for Employment Insurance benefits.⁴ The General Division advised the Claimant that she would need to show that it was more likely than not that she had undertaken reasonable and customary efforts to obtain suitable employment and that she also had to show that she was capable of and available for work from May 9 to September 16, 2022.

[16] A review of the file, including the audio recording of the General Division, shows that the member gave the Claimant a full and fair opportunity to present her case. The Tribunal invited the Claimant to file documents and submissions. It let her know how she could file these.

[17] At the hearing, the member gave the Claimant the chance to fully and fairly present her case. At the end of the hearing, the member asked the Claimant whether there was anything else she wanted to say about her case. The Claimant confirmed that she did not have anything else to add.⁵

[18] Given these considerations, I am not satisfied that there is an arguable case that the General Division failed to follow the principles of procedural fairness.

⁴ See for instance, at approximately 26:48 to 27:48 of the audio recording of the General Division hearing.

⁵ At approximately to 1:01:06 to 1:01:17 of the audio recording of the General Division hearing.

Is there an arguable case that the General Division made any legal or factual mistakes?

[19] I have reviewed the file and the General Division decision to determine whether the General Division might have made any underlying errors.⁶

[20] The Claimant had to show that she was available for work. The General Division properly considered the relevant factors in deciding whether the Claimant was available for work.

[21] The Claimant does not challenge any of the General Division's findings of fact. Indeed, the General Division's findings of fact are generally consistent with the evidence before it.

[22] The General Division misstated when the Claimant applied for regular benefits. The General Division found that the Claimant applied for benefits on May 9, 2022 when the application form shows that the Claimant applied on May 13, 2022. However, the General Division did not base its decision on this fact, nor does this error change the outcome.

[23] The General Division addressed the conflicting evidence and explained why it preferred some of the evidence over others. The General Division was entitled to assess and weigh the evidence and ultimately decide in favour of some of it.

[24] I am not satisfied that there is an arguable case that the General Division made any legal or factual errors.

⁶ *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

Conclusion

[25] I am not satisfied that the appeal has a reasonable chance of success.
Permission to appeal is refused. This means that the appeal will not be going ahead.

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

Janet Lew
Member, Appeal Division