



[TRANSLATION]

Citation: *SP v Canada Employment Insurance Commission*, 2023 SST 1184

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: S. P.
Representative: P. L.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated
June 21, 2023 (GE-23-164)

Tribunal member: Pierre Lafontaine

Decision date: August 30, 2023
File number: AD-23-696

Decision

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

Overview

[2] The Respondent (Commission) decided that the Applicant (Claimant) was not entitled to EI regular benefits as of September 28, 2020, because she was taking a training course on her own initiative and was not available for work.

[3] The General Division found that the Commission did not approve the Claimant's training. It found that the Claimant did not rebut the presumption of non-availability that applies to full-time students. It found that the Claimant was not available for work within the meaning of the law.

[4] The Claimant now seeks permission from the Appeal Division to appeal the General Division decision. She says that the Commission did not exercise its power judicially when it reconsidered her claim. The Claimant argues that the General Division misinterpreted the law on reconsideration and did not consider the Digest of Benefit Entitlement Principles (Digest).

[5] The Claimant says that she met the criteria of section 25 of the *Employment Insurance Act* (EI Act) and was then denied because of temporary measures that would not allow her to correct errors she was not aware of.

[6] I must decide whether there is an arguable case that the General Division made a reviewable error based on which the appeal has a reasonable chance of success.

[7] I am refusing permission to appeal because the Claimant has not raised a ground of appeal based on which the appeal has a reasonable chance of success.

Issue

[8] Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

Analysis

[9] 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 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.

[10] 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 on the hearing of the appeal on the merits. At the permission to appeal stage, the Claimant does not have to prove her case but must establish that her 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.

[11] I will grant 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.

Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

[12] The Claimant argues that the Commission did not exercise its power judicially when it reconsidered her claim. She says that the General Division misinterpreted the law on reconsideration and did not consider the Digest.

[13] The Claimant says that she met the criteria of section 25 of the EI Act and was then denied because of temporary measures that would not allow her to correct errors she was not aware of.

The Commission's reconsideration powers

[14] In an earlier decision involving the parties to this appeal, the Appeal Division decided that the Commission used its discretion judicially under section 153.161 of the EI Act when it decided to reconsider the Claimant's claim.¹

[15] But, the Appeal Division returned the file to the General Division to determine whether the Claimant was taking unauthorized training and, if so, whether she was available for work from September 28, 2020. The General Division did so.

[16] So, the General Division did not make an error by following the Appeal Division's instructions and by indicating in its decision that it did not have jurisdiction to intervene on the issue that the Appeal Division had already decided.

– Unauthorized training

[17] The General Division found that NB Connect never received the Claimant's request for authorization form because of an error in the email address used.

[18] When it verified the Claimant's benefit period, the Commission asked her to provide documentation showing that her training had been authorized. The Commission found that the Claimant's training was not authorized.

[19] The wording of section 25 of the EI Act says that a claimant must be referred to participate in a program **before they start** that program. The wording says that a claimant "is taking [...] a course or program" to which "the Commission **has referred** them." The referral must have already taken place before starting the program.

[20] So, it is well established that a claimant is not entitled to benefits during their training unless the Commission approves it **beforehand**.² In other words, a claimant has to wait for the Commission to approve the program or course even if they fully expect to receive approval or be referred to the program or course, and even if they

¹ *Employment Insurance Commission v SP*, 2022 SST 1557. If the Claimant disagrees with the decision, she must seek judicial review before the Federal Court of Appeal.

² CUB 66634, CUB 55712

ultimately do get it.³ This is true even if the Commission has approved other students in the same course.⁴

[21] I sympathize with the Claimant, but I see no reviewable error made by the General Division based on which the appeal might succeed. The General Division decision is based on the evidence before it and is consistent with the law and case law.

[22] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for permission to appeal, I am of the view 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.

[23] Permission to appeal is refused. The appeal will not proceed. Still, given the particular facts of the case, I would invite the Commission to consider how it might assist the Claimant.

Pierre Lafontaine
Member, Appeal Division

³ See *Canada Employment Insurance Commission v L. S.* 2019 SST 969, a case similar to the Claimant's.

⁴ CUB 56268.