



Citation: *MC v Canada Employment Insurance Commission*, 2023 SST 1044

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: M. C.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated May 2, 2023
(GE-22-3330)

Tribunal member: Stephen Bergen

Decision date: August 3, 2023

File number: AD-23-590

Decision

[1] I am refusing leave (permission) to appeal. The appeal will not proceed.

Overview

[2] M. C. is the Applicant. He made a claim for Employment Insurance (EI) benefits in October 2020 so I will call him the Claimant. The Respondent, the Canada Employment Insurance Commission (Commission), paid him EI benefits on the claim.

[3] In June 2022, the Commission sought to verify the Claimant's availability for work during the period that he was going to school and claiming benefits. The Commission was not satisfied with the Claimant's response and decided that the Claimant was not available for work from October 26, 2020, to April 30, 2021. This meant that the Claimant was not entitled to the benefits he had received for that period, and the Commission asked the Claimant to pay them back.

[4] The Commission reconsidered at the request of the Claimant, but it did not change its decision. The Claimant appealed to the General Division, which dismissed his appeal. The Claimant is now seeking leave to appeal to the Appeal Division.

[5] I am refusing leave to appeal. The Claimant has not made out an arguable case that the General Division made an important error of fact.

Issue

[6] Is there an arguable case that the General Division made an important error of fact?

I am not giving the Claimant permission to appeal.

General Principles

[7] For the Claimant's application for leave to appeal to succeed, his reasons for appealing would have to fit within the "grounds of appeal." The grounds of appeal identify the kinds of errors that I can consider.

[8] I may consider only the following errors:

- a) The General Division hearing process was not fair in some way.
- b) 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 (error of jurisdiction).
- c) The General Division based its decision on an important error of fact.
- d) The General Division made an error of law when making its decision.¹

[9] To grant this application for leave and permit the appeal process to move forward, I must find that there is a reasonable chance of success on one or more grounds of appeal. Other court decisions have equated a reasonable chance of success to an “arguable case.”²

Important Error of Fact

[10] To be considered available for work, a claimant must have a desire to return to work as soon as a suitable job is available, express that desire through job search efforts, and not set personal conditions that unduly restrict his chances of finding work. These three factors are known as the *Faucher* test.³

[11] The Claimant disagrees with the General Division’s finding that he did not make enough effort to find work.

[12] In his Application to the Appeal Division, he lists some of the efforts he made to find work, highlights his difficulties in obtaining proof of those efforts, and suggests that the particular circumstances of the pandemic were not considered.

[13] The General Division noted that the Claimant had provided a list of bars and restaurants that he visited to ask for work. It was aware that he interviewed for a job and that he applied for another job at a security company.

¹ This is a plain language version of the grounds of appeal. The full text is in section 58(1) of the *Department of Employment and Social Development Act* (DESDA).

² See *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; and *Ingram v Canada (Attorney General)*, 2017 FC 259.

³ See *Faucher v Canada Employment and Immigration Commission*, A-56-96, and A-57-96.

[14] The General Division also acknowledged the Claimant's testimony that he had searched online for jobs. However, the Claimant had made earlier declarations on training questionnaires that he wasn't looking for work. The General Division decided to give more weight to those early declarations because the Claimant had no records to confirm his online searches or applications.

[15] The General Division considered that the Claimant had a connection to his former employer. It stated that he continued to accept shifts and that he hoped to be recalled to his job. However, it did not accept that it was enough for the Claimant to wait for a recall, even in combination with those other efforts that it accepted.

[16] The General Division did not go into detail to explain how the pandemic affected the availability of jobs. It is well-known that job opportunities, particularly in the service sector, were fewer and harder to get during the pandemic. What the General Division did say about this is that it was "not enough [for the Claimant] to say that there were no jobs available due to Covid-19."⁴

[17] The Claimant did not say anything about how the General Division considered the other two factors of the *Faucher* test. The General Division accepted that the Claimant had the desire to return to work. However, it also found that he set personal conditions that unduly limited his chances of finding a job.

[18] To find that the Claimant unduly limited his chances, the General Division referred to the Claimant's evidence that he wanted to work reasonably close to where he lived, but it also considered his testimony that he would have accepted a job of up to an hour's commute by bus. The General Division also acknowledged that the Claimant did not want to work for employers with high customer traffic, because he didn't want to contract Covid-19 and spread it to his immunocompromised girlfriend. In sum, the General Division found that the Claimant unduly limited his chances because he,

⁴ See para 43 of the General Division decision.

“mostly limited his job search to restaurants concentrated in one area of the city at a time when that work was scarce.”⁵

[19] The Claimant has not pointed to any relevant evidence that the General Division overlooked or misunderstood. Rather, he seems to disagree with how the General Division weighed the evidence, and with the conclusions that it drew from the evidence.

[20] I have no ability to reweigh the evidence to come to a different conclusion.⁶ I cannot intervene in the General Division’s findings, unless those findings ignore or misunderstand the evidence, or unless they are unsupported by the available evidence.

[21] There is no arguable case that the General Division made an important error of fact about the Claimant’s job search efforts.

[22] I appreciate that the Claimant is unrepresented. He may not have understood precisely what he should argue. Therefore, I searched the record for relevant evidence that the General Division may have ignored or misunderstood.⁷ The record does not support an argument that the General Division made such an error.

[23] The Claimant’s appeal has no reasonable chance of success.

Conclusion

[24] I am refusing permission to appeal. This means that the appeal will not proceed.

Stephen Bergen
Member, Appeal Division

⁵ See para 46 of the General Division decision.

⁶ *Bergeron v Canada (Attorney General)*, 2016 FC 220, *Hideq v Canada (Attorney General)*, 2017 FC 439, *Parchment v Canada (Attorney General)*, 2017 FC 354.

⁷ I am following the direction of the Federal Court in decision such as *Karadeolian v. Canada (Attorney General)*, 2016 FC 615.