Citation: *CM v Canada Employment Insurance Commission*, 2024 SST 39

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	C. M.
Representative:	R. D.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated September 11, 2023 (GE-23-1944)

Tribunal member:	Solange Losier
Decision date:	January 11, 2024
File number:	AD-23-934

Decision

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

Overview

[2] C. M. is the Claimant in this case. She applied for Employment Insurance (EI) regular benefits. The Canada Employment Insurance Commission (Commission) decided that they couldn't pay her EI benefits from September 26, 2022 because she had not proven she was available for work.[1]

[3] The General Division came to the same conclusion.[2] It decided that the Claimant had not shown she was available for work and had not proven her efforts to find a job were reasonable and customary.

[4] The Claimant is now asking for permission to appeal the General Division decision to the Appeal Division.[3]

[5] I am denying the Claimant's request for permission to appeal because there is no reasonable chance of success.

Issue

[6] Is there an arguable case that the General Division based its decision on an important error of fact when it decided that Claimant was not available for work?

Analysis

[7] An appeal can proceed only if the Appeal Division gives permission to appeal.[4]

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[1] See reconsideration decision at page GD3-31.
[2] See General Division decision at pages AD1A-1 to AD1A-8.
[3] See application to the Appeal Division at pages AD1-1 to AD1-7.
[4] See section 56(1) of the *Department of Employment and Social Development Act* (DESD Act).

[8] I must be satisfied that the appeal has a reasonable chance of success.[5] This means that must be some arguable ground that the appeal might succeed.[6]

[9] An error of fact happens when the General Division has "based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it".[7]

[10] This means that I can intervene if the General Division bases its decision on an important mistake about the facts of the case. This involves considering some of the following questions:[8]

- Does the evidence squarely contradict one of the General Division's key findings?
- Is there no evidence that could rationally support one of the General Division's key findings?
- Did the General Division overlook critical evidence that contradicts one of its key findings?

– **It is not arguable that the General Division based its decision on an important mistake about the facts of the case**

[11] To get EI regular benefits, the Claimant to prove that they are capable of and available for work and unable to obtain suitable employment.[9] Availability is assessed using three factors (these are often called the "Faucher" factors).[10] As well, the Claimant has to prove that she made reasonable and customary efforts to find suitable employment.[11]

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[5] See section 58(2) of the DESD Act.
[6] See *Osaj v Canada (Attorney General)*, 2016 FC 115.
[7] See section 58(1)(c) of the DESD Act.
[8] This is a summary of the Federal Court of Appeal's decision in *Walls v Canada (Attorney General)*, 2022 FCA 47 at paragraph 41.
[9] This requirement comes from section 18(1)(a) of the *Employment Insurance Act* (EI Act).
[10] The Federal Court of Appeal described these factors in *Faucher* v *Canada (Employment and Immigration Commission)*, 1997 CanLII 4856.
[11] See section 50(8) of the EI Act and section 9.001 of the *Employment Insurance Regulations* (EI Regulations).

[12] The General Division had to decide whether the Claimant had proven she was available for work from September 26, 2022. It said that the Claimant found work on May 1, 2023.[12] Because of that, it assessed her availability for work from September 26, 2022 to April 30, 2023.

[13] The General Division assessed the Claimant's availability by analyzing the following three Faucher factors and decided the following:

- Under the first factor, it accepted that she had a desire to work and wanted a full-time job after mid-November 2022.[13]

- Under the second factor, it decided that she had not made enough effort to find a suitable job from September 26, 2022 to April 30, 2023 because her efforts were limited.[14]

- Under the third factor, it said that the Claimant was assisting in caring for her mother and was only partially available during the week from September 26, 2022 to mid-November 2022.[15] Because of that, it found that the Claimant had set some personal conditions that might have affected her chances of going back to work. After mid-November 202, it found that she didn't set any personal conditions.

[14] The General Division concluded that the Claimant had not proven she was capable of and available for work but unable to find a suitable job.[16]

[15] The General Division also assessed whether the Claimant had made reasonable and customary efforts to find a suitable job. It found that the Claimant's efforts to find work over a period of seven months, from September 26, 2022 to April 30, 2023 were not enough and not sustained.[17]

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[12] See paragraph 8 of the General Division decision.
[13] See paragraph 32 of the General Division decision.
[14] See paragraph 36 of the General Division decision.
[15] See paragraphs 17 and 37 of the General Division decision.
[16] See paragraph 39 of the General Division decision and section 18(1)(a) of the EI Act.
[17] See paragraph 28 of the General Division decision and section 50(8) of the EI Act.

[16] In her application to the Appeal Division, the Claimant argues that the General Division made an important error of fact because it did not consider the unique area she resides in and the lack of job opportunities in that region, especially during the winter.[18]

[17] The General Division didn't ignore the fact that the Claimant lived in a tourist area. In its decision, it acknowledged the Claimant's argument that she lived in a tourist area that shuts down during the winter and that there weren't many job opportunities.[19]

[18] However, the General Division found that the Claimant could have looked for job opportunities online, possibly for remote work. It said that she didn't look into any of those possibilities. It decided that she hadn't really undertaken a fulsome search for work based on the evidence it heard.[20]

[19] As a result, it is not arguable that the General Division made an important error of fact because it considered her argument about her area of residence, but found that she could have looked for job opportunities online, such as remote work. Its key findings were consistent with the facts and evidence. There is no reasonable chance of success on this ground.

[20] I acknowledge that the Claimant disagrees with the General Division's decision but I cannot conduct a rehearing or reweigh the evidence in order to come to a different conclusion. [21]

– **There are no other reasons for giving the Claimant permission to appeal**

[21] I reviewed the file, listened to the audio recording and examined the General Division decision. I did not find any relevant evidence that the General Division might have ignored or misinterpreted.[22]

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[18] See pages AD1-3 and AD1-7.
[19] See paragraphs 6 and 24 of the General Division decision.
[20] See paragraph 27 of the General Division decision.
[21] See *Garvey* v *Canada (Attorney General)*, 2018 FCA 118.
[22] The Federal Court has said that I should do this in decisions like *Griffin v Canada (Attorney General),* 2016 FC 874 and *Karadeolian v Canada (Attorney General),* 2016 FC 615.

Conclusion

[22] Permission to appeal is refused. This means that the appeal will not proceed.

Solange Losier
Member, Appeal Division