Citation: *RS v Canada Employment Insurance Commission*, 2024 SST 523

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	R. S.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated April 2, 2024 (GE-24-462)

Tribunal member:	Stephen Bergen
Decision date:	**May 13, 2024**
File number:	AD-24-320

Decision

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

Overview

[2] R. S. is the Applicant. I will call him the Claimant because this application is about his claim for Employment Insurance (EI) benefits.

[3] The Claimant applied for regular EI benefits in November 2023, he told the Respondent, the Canada Employment Insurance Commission (Commission), that he was planning to start a training program beginning in January 2024. He said that he was waiting to find out if he would obtain permission to take full time training from the Commission.

[4] The Commission did not approve the Claimant's training program. It decided that it could not pay him benefits while he was going to a non-referred training program because he was not available for work. The Claimant asked the Commission to reconsider, but it would not change its decision. When he appealed the reconsideration decision to the General Division of the Social Security Tribunal, it dismissed his appeal. He is now asking for permission to appeal to the Appeal Division.

[5] I am refusing permission to appeal. There is no arguable case that the General Division made an important error of fact.

Preliminary matters

[6] The Claimant attached documents to his application for leave to appeal that he had not given to the General Division to consider. In other words, it is new evidence. The Appeal Division cannot use new evidence to help assess whether the General Division made an important error of fact.[1] I will not be considering those documents.

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[1] *El Haddadi v. Canada (Attorney General)*, 2016 FC 482; *Mette v. Canada (Attorney General)*, 2016 FCA 276.

Issue

[7] 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

[8] 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.

[9] 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.[2]

[10] 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."[3]

[11] In his Application to the Appeal Division, the Claimant asserted that the General Division made an important error of fact.

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

Important error of fact

[12] The General Division makes an "important error of fact" where it **bases its decision** on a finding of fact that ignores or misunderstands relevant evidence, or where a key finding does not follow logically from the available evidence.

[13] The General Division decided that the Claimant was not entitled to benefits in two ways. First, it held that he had not rebutted the presumption of non-availability for full-time students. A full-time student who has not rebutted this presumption is not available for work.

[14] The General Division held that the Claimant had not rebutted the presumption because it found:

- The Claimant did not have a history of working full-time while attending school.
- The Claimant's circumstances were not somehow exceptional.

[15] The Claimant did not identify any evidence that the General Division overlooked or misunderstood that could have challenged these findings. The General Division relied on evidence that the Claimant did not have history of working full-time while attending school. It did not overlook evidence of any exceptional circumstance by which it might have found that the Claimant would have been able to work full-time while completing his studies.

[16] The General Division also held that the Claimant was not available under the *Faucher* test.[4] Even if the Claimant had been able to overcome the presumption, he would still have had to prove his availability under this test.

[17] It found that the Claimant did not meet two of the three *Faucher* factors:

- His job search efforts were insufficient.

[4] The three factors were described in *Faucher v Canada (Employment and Immigration Commission)*, A-56-96. The General Division outlined the three "*Faucher* factors" in para 22.

- He set personal conditions that unduly limited his chances of returning to the labour market.

[18] I appreciate that the Claimant may disagree with the General Division's findings. He may feel that he should not have had to look for full-time work or work that he did not consider "sustainable." However, the Claimant did not point to any relevant evidence that the General Division overlooked or misunderstood. The General Division decided that his online job search was not an active search, and that he was unduly limiting himself to part-time work. I have no power to interfere with how the General Division weighed or evaluated the evidence to decide as it did.[5]

[19] The Claimant's appeal seems to be based on his belief that his training should have been approved, and that he should be supported because his training and employment plan makes good sense.

[20] Unfortunately for the Claimant, the Commission cannot reconsider a decision whether to approve or accept a claimant's referral to a training program.[6] Since the General Division can only hear appeals from reconsideration decisions, there was no way for the Claimant to get the General Division to review the training referral issue.[7] The issue was not before the General Division, so it could not have made a mistake by not considering it.

[21] So far as the Claimant's argument that he had worthy and sensible plans to retrain and re-enter the labour market, the General Division could not have found that he was entitled to EI benefits, even if it accepted that his plan deserved to be supported. It could not ignore the legal tests by which it found that he was not available.

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[5]See for example: *Hideq v Canada (Attorney General)*, 2017 FC 439, *Parchment v Canada (Attorney General)*, 2017 FC 354, *Johnson v Canada (Attorney General)*, 2016 FC 1254, *Marcia v Canada (Attorney General)*, 2016 FC 1367.
[6] See section 25(2) and section 112 of the *Employment Insurance Act* (EI Act).
[7] See section 113 of the EI Act.

[22] There is no arguable case that the General Division made an important error of fact. The Claimant has no reasonable chance of success.

Conclusion

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

Stephen Bergen
Member, Appeal Division