



Citation: *KM v Canada Employment Insurance Commission*, 2024 SST 539

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: K. M.
Representative: A. M.
Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated March 12, 2024
(GE-24-557)

Tribunal member: Pierre Lafontaine
Decision date: May 14, 2024
File number: AD-24-276

Decision

[1] Leave to appeal is refused. This means the appeal will not proceed.

Overview

[2] The Respondent (Commission) decided that the Applicant (Claimant) is disentitled from receiving Employment Insurance (EI) regular benefits as of October 2, 2023, because he wasn't available for work.

[3] The Commission decided that the Claimant isn't available for work because he never responded to its numerous attempts to contact him to provide the necessary information. The Commission notified the Claimant that benefits could not be paid. The decision letter says that any documents or information that had not previously been submitted that might affect the decision could be submitted. It provided information to the Claimant to call Service Canada or go to a Service Canada Centre for more information.

[4] The Claimant didn't respond to the Commission with additional information. In his request for reconsideration, he said he was available for work. He said he was looking for work in the job bank and that he tried to contact the Commission. The Claimant did not respond to the Commission's email and telephone message. Therefore, the Commission maintained its initial decision.

[5] In support of his appeal to the General Division, the Claimant stated he was always available for work and that he tried contacting the Commission for many weeks without success. The Claimant requested an in-writing hearing. The General Division sent two letters to the Claimant advising him that he can send documents to the Tribunal. The Claimant did not file any documents to support his availability to work.

[6] Based on the evidence before it, the General Division found that the Claimant did not show that he wanted to go back to work as soon as a suitable job was available. It found that the Claimant did not make enough efforts to find work. The General Division

found that the Claimant set personal conditions that limited his chances of going back to work. It concluded that the Claimant hasn't shown that he is available for work within the meaning of the law.

[7] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. In support of his application for permission to appeal, the Claimant submits that he has been looking for employment.

[8] The Appeal Division wrote a letter to the Claimant asking that he explain in detail why he is appealing the General Division decision. He was told that it is not enough to simply say that he has been looking for work. The Claimant responded by filing job applications.

[9] I must decide whether there is some reviewable error of the General Division upon which the appeal might succeed.

[10] I am refusing leave to appeal because the Claimant's appeal has no reasonable chance of success.

Issue

[11] Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

Analysis

[12] The law specifies the only grounds of appeal of a General Division decision.¹ These reviewable errors are that:

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.

¹ Section 58(1) of the *Department of Employment and Social Development Act*.

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.

[13] An application for leave to appeal is a preliminary step to a hearing on the merits. The Claimant must meet this initial hurdle, but it is lower than the one of the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove his case but must establish that the appeal has a reasonable chance of success based on a reviewable error.

[14] In other words, I need to be satisfied that the reasons for appeal fall within any of the above-mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success in appeal, to grant leave.

I am not giving the Claimant permission to appeal

[15] When reviewing the file, I can't help but notice that the Claimant was given many opportunities by the Commission and the General Division to provide evidence in support of his availability for work prior to the General Division hearing in-writing. Unfortunately, for the Claimant, he did not follow-up on all these requests.

[16] I must reiterate that an appeal to the Appeal Division is not an opportunity for a party to correct deficiencies in its evidence before the General Division and hope for a different outcome. It is well established that I must decide the present application for leave to appeal based on the evidence presented to the General Division.²

[17] To be eligible to receive benefits, claimants must prove that they are capable of and available for work—on any given workday—and are unable to find suitable employment.³

[18] Availability must be determined by reviewing three factors:

- the desire to return to the labour market as soon as a suitable job is offered;

² *Sibbald v Canada (Attorney General)*, 2022 FCA 157.

³ Section 18(1)(a) of the *Employment Insurance Act*.

- the expression of that desire through efforts to find a suitable job, and
- the non-setting of personal conditions that might unduly limit the chances of returning to the labour market.⁴

[19] Furthermore, availability is determined for each working day in a benefit period for which a claimant can prove that on that day they are capable of and available for work, and unable to obtain suitable employment.⁵

[20] Based on the evidence before it, the General Division found that the Claimant did not show that he wanted to go back to work as soon as a suitable job was available. It found that the Claimant did not make enough efforts to find work. The General Division found that the Claimant set personal conditions that limited his chances of going back to work.

[21] The evidence supports the General Division's conclusion that the Claimant did not demonstrate that he was available for work but unable to find a suitable job.

[22] A mere statement of availability is not enough for a claimant to discharge the burden of proof. Before the General Division, the Claimant did not meet his burden of proof.

[23] I see no reviewable error made by the General Division. The Claimant does not meet the relevant factors to determine availability. Although I understand the Claimant's situation, this does not eliminate the requirement to show availability within the meaning of the law to receive EI benefits.

[24] After reviewing the appeal file, the General Division decision, and the Claimant's arguments, I find that the General Division considered the evidence before it and properly applied the *Faucher* factors in determining the Claimant's availability. I cannot find any failure by the General Division to observe a principle of natural justice. I have no choice but to find that the appeal has no reasonable chance of success.

⁴ *Faucher v Canada* (CEIC), A-56-96.

⁵ *Canada (Attorney General) v Cloutier*, 2005 FCA 73.

Conclusion

[25] Leave to appeal is refused. This means the appeal will not proceed.

Pierre Lafontaine
Member, Appeal Division