



Citation: *EK v Canada Employment Insurance Commission*, 2024 SST 513

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: E. K.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated March 18, 2024
(GE-24-546)

Tribunal member: Solange Losier

Decision date: May 12, 2024

File number: AD-24-288

Decision

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

Overview

[2] E. K. is the Claimant in this case. She works as an Early Childhood Educator. She stopped working for the summer months and applied for Employment Insurance (EI) regular benefits.

[3] The Canada Employment Insurance Commission (Commission) decided that the Claimant had not proven that she was available for work.¹ Because of this, she was not entitled to get EI benefits.²

[4] The General Division concluded the same. It found that the Claimant had not proven she was available for work from June 29, 2023 to August 31, 2023.³

[5] The Claimant is now asking for permission to appeal to the Appeal Division.⁴ She argues that the General Division didn't follow a fair process.

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

Issue

[7] Is there an arguable case that the General Division didn't follow a fair process?

Analysis

– The test for getting permission to appeal

[8] An appeal can proceed only if the Appeal Division gives permission to appeal.⁵

¹ See Commission's reconsideration decision at pages GD3-48 to GD3-49.

² See sections 18(1) and 50(8) of the *Employment Insurance Act* (EI Act).

³ See General Division decision at pages AD1A-1 to AD1A-10.

⁴ See Application to the Appeal Division at pages AD1-1 to AD1-11.

⁵ See section 56(1) of the *Department of Employment and Social Development Act* (DESD Act).

[9] I must be satisfied that the appeal has a reasonable chance of success.⁶ This means that there must be some arguable ground that the appeal might succeed.⁷

[10] I can only consider certain types of errors. I have to focus on whether the General Division could have made one or more of the relevant errors (this is called the “grounds of appeal”).⁸

[11] The possible grounds of appeal to the Appeal Division are that the General Division did one of the following:⁹

- proceeded in a way that was unfair
- acted beyond its powers or refused to exercise those powers
- based its decision on an important error of fact
- made an error in law

– **The Claimant argues that the General Division didn’t follow a fair process**

[12] In the Claimant’s application to the Appeal Division, she indicated that the General Division didn’t follow a fair process.¹⁰ I have summarized her main arguments as follows.

[13] First, she says that her EI claim had been approved initially by a Service Canada agent, but that he changed his mind a few days later. She argues that this was relevant.

[14] Second, she says that the General Division relied on evidence from the Commission that was not credible because there were lies and clerical errors. As well, the General Division found that she was not credible which is accusatory and discriminatory.

⁶ See section 58(2) of the DESD Act

⁷ See *Osaj v Canada (Attorney General)*, 2016 FC 115

⁸ See section 58(1) of the DESD Act

⁹ See section 58(1) of the DESD Act

¹⁰ See Application to the Appeal Division at page AD1-3.

[15] Third, she is unclear how the General Division decided that she was not available for work because she made efforts to find suitable employment. She does not understand what it means to make “enough effort” because she applied for several jobs while she was unemployed in July and August 2023.

[16] And lastly, It wasn’t her fault if businesses weren’t hiring because many places want an employee longer than 6 weeks.

I am not giving the Claimant permission to appeal

– **There is no arguable case that the General Division didn’t follow a fair process**

[17] The principles of natural justice are concerned with procedural fairness. The right to a fair hearing before the Tribunal includes certain procedural protections. For example, the right to an impartial (unbiased) decision maker, the right of a party to know the case against them and to be given an opportunity to respond to it.

[18] If the General Division doesn’t follow a fair process, then I can intervene.¹¹

[19] The Claimant hasn’t really pointed out how the General Division failed to follow a fair process. Even so, I reviewed the file and listened to the audio recording hearing to assess whether there was an arguable case on this ground.

[20] This is what I heard from the audio recording:

- The General Division explained her independence from Service Canada and the Commission
- The General Division explained that this was a new hearing, so it was not bound by the Commission’s previous decisions
- The Claimant confirmed that she received all of the relevant documents
- The General Division explained the legal test set out for availability cases

¹¹ See section 58(1)(a) of the DESD Act.

- The Claimant testified and had an opportunity to present her case
- The Claimant identified that some of the Commission's evidence (telephone call logs) were not accurate
- The General Division asked the Claimant relevant questions in an impartial manner
- And lastly, the General Division member was respectful throughout the hearing

[21] Having reviewed the file and the audio recording, I am not satisfied that there is an arguable case that the General Division didn't follow a fair process.

[22] The Claimant's arguments to the Appeal Division amount to a disagreement with the General Division's findings and outcome that she was not available for work.

[23] The General Division is the trier of fact and it was free to weigh the evidence and make findings of fact. An appeal to the Appeal Division is not a new hearing, so it is important to know that I cannot reweigh the evidence in order to come to a different or more favourable outcome for the Claimant.¹²

[24] In particular, the General Division didn't ignore the Claimant's evidence that a Service Canada agent told her during their discussion that she was eligible for EI benefits, but later changed his mind. The Commission's reconsideration shows that she was denied EI benefits because they found she was not available for work.¹³

[25] The General Division explained in its decision and at the hearing that it was a "new" hearing, so it would do its own assessment of the evidence and apply the law to the facts to decide whether she had proven she was available for work.¹⁴

¹² See *Garvey v Canada (Attorney General)*, 2018 FCA 118.

¹³ See Commission's reconsideration decision at pages GD3-48 to GD3-49.

¹⁴ See General Division audio recording at 18:30-24:25 and paragraph 13 of the General Division decision.

[26] The General Division was not bound by what a Service Canada agent may have told the Claimant during their initial discussions. It had to come to its own conclusions, which is exactly what it did.

[27] The General Division was also aware that there were some inaccuracies in the call logs (for example, one of those errors was that the Claimant had sons, and not daughters).¹⁵ There were other errors as well.

[28] Despite the errors in the call logs, the General Division concluded that the Claimant had not proven she was available for work. It found that she hadn't shown that she wanted to go back to work during the summer break, that she didn't make enough efforts to find a suitable job and unduly limited her chances of finding work by imposing personal conditions on her search.¹⁶

[29] The General Division also explained in its decision why it found the Claimant was not credible.¹⁷ It decided to give more weight to what she told the Commission before she knew her claim for EI benefits had been denied.¹⁸ It was entitled to make those findings based on the evidence.

[30] It is not arguable that the General Division didn't follow a fair process.¹⁹ The Claimant disagrees with the findings and outcome of the General Division decision, but that isn't enough for me to intervene.

[31] I did not find any key evidence that the General Division might have ignored or misinterpreted.²⁰ There is no reasonable chance of success.

¹⁵ See paragraph 44 of the General Division decision.

¹⁶ See paragraphs 35-36, 45, 50, 53-54 of the General Division decision. Also, see paragraph 31 of the General Division decision which sets out the criteria to assess availability for work (this comes from a decision called *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96).

¹⁷ See paragraphs 34, 38-43, 46 of the General Division decision.

¹⁸ See paragraph 43 of the General Division decision.

¹⁹ See section 58(1)(a) of the DESD Act.

²⁰ See *Karadeolian v Canada (Attorney General)*, 2016 FC 615, which recommends doing such a review.

Conclusion

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

Solange Losier
Member, Appeal Division