



[TRANSLATION]

Citation: *KL v Canada Employment Insurance Commission*, 2024 SST 604

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: K. L.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated
March 13, 2024 (GE-23-3348)

Tribunal member: Pierre Lafontaine

Decision date: May 28, 2024

File number: AD-24-268

Decision

[1] Permission to appeal is refused. The appeal will not proceed.

Overview

[2] The Applicant (Claimant) established an initial claim for EI regular benefits effective October 3, 2021. On August 10, 2022, the Claimant asked to change her original reports for the period January 9, 2022, to June 25, 2022. She wanted to correct her report for the period in question because she was not capable of and available for work every day because of illness even though she had declared herself available for that period.

[3] The Claimant provided the Respondent (Commission) with medical evidence of a work stoppage for the period from December 12 to December 25, 2021. She provided further medical evidence to extend the leave to January 8, 2022, and for another work stoppage for the period from February 7 to March 5, 2022.

[4] On September 13, 2022, an investigator contacted her to verify her entitlement to benefits for the period between March and July 2022. The Claimant then said that she was available for work during that period.

[5] The Commission told the Claimant that benefits could not be paid as of March 6, 2022, because she had not submitted the requested documents. The Claimant asked it to reconsider her application. The Commission upheld its initial decision.

[6] The General Division found that the Claimant had not shown that she was unable to work as of March 6, 2022. It found that the Claimant was not entitled to sickness benefits from that point forward.

[7] The Claimant then got permission to appeal to the Tribunal's Appeal Division. The Appeal Division found that the General Division made an important error of fact because the Claimant did not apply for sickness benefits from March 6, 2022. The

Appeal Division allowed the appeal. The file returned to the General Division for a decision on the Claimant's availability for work as of March 6, 2022.

[8] The General Division found that the Claimant did not have a desire to go back to work as soon as a suitable job was available. It found that the Claimant had not made enough effort to find a suitable job. The General Division found that the Claimant was limiting herself to trying to go back to her usual employer. It found that the Claimant was not available for work within the meaning of the law.

[9] The Claimant is asking for permission to appeal the General Division decision to the Appeal Division. She says that she properly explained her availability for work to the General Division. She argues that she could not provide the jobs she applied to because she had no response to her emails and the website did not allow her to.

[10] I must decide whether there is an arguable case that the General Division made a reviewable error based on which the appeal has a reasonable chance of success.

[11] I am refusing permission to appeal because the Claimant has not raised a ground of appeal based on which the appeal has a reasonable chance of success.

Issue

[12] Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

Analysis

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

1. The General Division hearing process was not fair in some way.

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

2. The General Division did not decide an issue it should have decided. Or, it decided something it did not have the power to decide.
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.

[14] An application for permission to appeal is a preliminary step to a hearing on the merits. It is an initial hurdle for the Claimant to meet, but it is lower than the one that must be met at the hearing of the appeal on the merits. At the permission to appeal stage, the Claimant does not have to prove her case; she must instead establish that the appeal has a reasonable chance of success. In other words, she has to show that there is arguably a reviewable error based on which the appeal might succeed.

[15] I will grant permission to appeal if I am satisfied that at least one of the Claimant's stated grounds of appeal gives the appeal a reasonable chance of success.

I am not giving the Claimant permission to appeal

[16] The Claimant is asking for permission to appeal the General Division decision. She says that she properly explained her availability for work to the General Division. She argues that she could not provide the jobs she applied to because she had no response to her emails and the website did not allow her to.

[17] The General Division found that the Claimant did not have a desire to go back to work as soon as a suitable job was available. It found that the Claimant had not made enough effort to find a suitable job.

[18] The General Division accepted the Claimant's initial statements that she was sick at different times and that she had applied once in April at the SAQ. It found that the Claimant, contrary to her obligations, had not shown her active job search.

[19] The General Division found that the Claimant was limiting herself to trying to go back to her usual employer.

[20] The General Division found that the Claimant was not available for work within the meaning of the law.

[21] I see no reviewable error made by the General Division. It correctly stated the applicable legal test for availability. It applied this test to the facts of this case and considered whether the Claimant was capable of and available for work as of March 6, 2022.

[22] An appeal to the Appeal Division is not an opportunity for the Claimant to reargue her case and hope for a different outcome. I find that the Claimant has not raised any question of law, fact, or jurisdiction that could justify setting aside the decision under review.

[23] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for permission to appeal, I have no choice but to find that the appeal has no reasonable chance of success.

Conclusion

[24] Permission to appeal is refused. The appeal will not proceed.

Pierre Lafontaine
Member, Appeal Division