



[TRANSLATION]

Citation: *HB v Canada Employment Insurance Commission*, 2024 SST 884

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant:	H. B.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated July 15, 2024 (GE-24-1889)
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Tribunal member:	Pierre Lafontaine
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Decision date:	July 29, 2024
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File number:	AD-24-477
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Decision

[1] Permission to appeal is refused. The appeal won't proceed.

Overview

[2] The Applicant (Claimant) left her job on February 15, 2021. She applied for Employment Insurance (EI) benefits after receiving the Canada Emergency Response Benefit (CERB).

[3] The Respondent (Commission) looked at the Claimant's reasons for leaving. It decided that she voluntarily left (or chose to quit) her job without just cause. It also found that the Claimant wasn't available for work because she was taking training. The Claimant challenged the Commission's decision, but it upheld its decision on reconsideration. The Claimant appealed to the Tribunal's General Division.

[4] The General Division found that the Claimant had just cause for leaving her job. But it found that the Claimant wasn't available for work, since she prioritized her training and didn't make enough efforts to look for a job.

[5] The Claimant is asking the Appeal Division for permission to appeal. She would like to have a new hearing to explain in more detail that she was available for work but that the pandemic had paralyzed the workforce.

Issue

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

1. The General Division hearing process wasn't fair in some way.
2. The General Division didn't decide an issue that it should have decided. Or, it decided something it didn't 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.

[7] 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 has to be met on the hearing of the appeal on the merits. At the permission to appeal stage, the Claimant doesn't have to prove her case; she has to establish that her 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.

[8] 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 permission to appeal to the Claimant

[9] The Claimant is asking the Appeal Division for permission to appeal. She would like to have a new hearing to explain in more detail that she was available for work but that the pandemic had paralyzed the workforce.

[10] The General Division found that the Claimant hasn't shown a desire to go back to work or made efforts to enter the workforce, and that she set conditions that would limit her chances of finding a job.¹

[11] The General Division gave more weight to the Claimant's initial statements to the Commission that she hadn't looked for work since the start of her training and that she would not give up her studies to accept a job.²

[12] Based on the evidence, the General Division found that the Claimant wanted to prioritize her studies during the period in question and that she hadn't been actively looking for work. The General Division found that she wasn't available for and capable of work every day within the meaning of the law.

[13] To receive EI benefits, a claimant has to actively look for work. The pandemic didn't change this requirement for claimants.

¹ The three factors set out in *Faucher*, A-56-96.

² See GD3B-11, GD3B-29, and GD3B-57.

[14] I find that the General Division correctly set out 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.

[15] An appeal to the Appeal Division isn't a new opportunity for the Claimant to argue her case and hope for a different outcome. I find that the Claimant hasn't raised any question of law, fact, or jurisdiction that could justify setting aside the decision under review.

[16] 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

[17] Permission to appeal is refused. This means that the appeal won't go ahead.

Pierre Lafontaine
Member, Appeal Division