



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *H. S. v. Canada Employment Insurance Commission*, 2018 SST 1127

Tribunal File Number: AD-18-660

BETWEEN:

H. S.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Janet Lew

Date of Decision: November 1, 2018

DECISION AND REASONS

DECISION

[1] The application for leave to appeal is refused.

OVERVIEW

[2] The Applicant, H. S. (Claimant), sustained injuries in a motor vehicle accident while he was abroad, delaying his return to Canada by several weeks. If he had not been injured, the Claimant would have returned to Canada as originally scheduled and would have immediately resumed working. After returning to Canada, the Claimant continued to experience symptoms from his injuries and therefore remained off work. He made a claim for Employment Insurance sickness benefits. The Respondent, the Canada Employment Insurance Commission (Commission), accepted his claim for sickness benefits but determined that the Claimant was disentitled from receiving benefits for the period when he was absent from Canada.¹

[3] The Claimant appealed the Commission's decision to the General Division, on the basis that his situation is unique and should be added to the list of exceptions. The General Division found that the Claimant was not entitled to receive benefits during his absence from Canada. The Claimant is now seeking leave to appeal the General Division's decision on the grounds that the General Division failed to observe a principle of natural justice and that it erred in law. I must now determine whether there is an arguable case that the General Division failed to observe a principle of natural justice or that it erred in law.

ISSUES

[4] Based on the Claimant's submissions, the issues before me are as follows:

Issue 1: Is there an arguable case that the General Division failed to observe a principle of natural justice?

¹ Commission's reconsideration letter dated April 20, 2018, at GD3-47 to GD3-48.

Issue 2: Is there an arguable case that the General Division erred in law when it determined that the Claimant was not entitled to receive any Employment Insurance sickness benefits when he was absent from Canada?

ANALYSIS

[5] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA) sets out the grounds of appeal as being limited to the following:

- (a) The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) The General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- (c) The General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[6] Before granting leave to appeal, I need to be satisfied that the reasons for appeal fall within the grounds of appeal set out under s. 58(1) of the DESDA and that the appeal has a reasonable chance of success. This is a relatively low bar. Claimants do not have to prove their case; they simply have to establish that the appeal has a reasonable chance of success based on a reviewable error. The Federal Court endorsed this approach in *Joseph v. Canada (Attorney General)*.²

Issue 1: Is there an arguable case that the General Division failed to observe a principle of natural justice?

[7] No. I am not satisfied that there is an arguable case that the General Division failed to observe a principle of natural justice.

[8] The Claimant notes that the General Division accepted his evidence, namely that he was injured while overseas and he was unable to return to Canada and resume working.

² *Joseph v. Canada (Attorney General)*, 2017 FC 391.

[9] The Claimant agrees that the general rule under s. 37 of the *Employment Insurance Act* disentitles a claimant from receiving benefits for any period during which that claimant is not in Canada. He acknowledges that he does not fall within any of the exceptions to the general rule under s. 55(1) of the *Employment Insurance Regulations* but argues that his situation merits an exception to the general rule. He asserts that adding his rather unique situation to the list of exceptions would serve to “uphold the higher principles of Justice, that all laws are enacted and meant to serve.”³

[10] The Claimant argues that the list of exceptions is incomplete and leads to an unfair situation, so it should be changed. He argues that anyone could fall into the same predicament as he did—becoming injured while travelling—and be left without any needed assistance.

[11] Natural justice is concerned with ensuring that claimants have a fair opportunity to present their case and that the proceedings are fair and free of any bias. Natural justice relates to issues of procedural fairness before the General Division, rather than the impact of a decision on a claimant. The Claimant’s allegations do not address any issues of procedural fairness or of natural justice as they relate to the General Division. The Claimant has not pointed to or provided any evidence—nor do I see any evidence—to suggest that the General Division might have deprived him of an opportunity to fully and fairly present his case or that it showed any bias against him. As a result, I am not satisfied that the appeal has a reasonable chance of success on this ground.

[12] Despite the Claimant’s compelling arguments that there are shortcomings to the list of exceptions and that it should be expanded to include cases such as his, neither the General Division nor the Appeal Division has any jurisdiction to amend the *Employment Insurance Act* or the *Employment Insurance Regulations*. The Claimant’s recourse in this regard lies elsewhere.

Issue 2: Is there an arguable case that the General Division erred in law when it determined that the Claimant was not entitled to receive any Employment Insurance sickness benefits when he was absent from Canada?

[13] No. The General Division did not err in law when it determined that the Claimant was not entitled to receive any Employment Insurance sickness benefits when he was absent from

³ Application to the Appeal Division - Employment Insurance, at AD1-4.

Canada. The General Division was bound to follow the provisions under s. 37 of the *Employment Insurance Act* and s. 55(1) of the *Employment Insurance Regulations*. I do not see that it erred in its application.

[14] Finally, I have reviewed the underlying record. I do not see that the General Division erred in law, whether or not the error appears on the record, or that it failed to properly account for any of the key evidence before it.

CONCLUSION

[15] The application for leave to appeal is refused.

Janet Lew
Member, Appeal Division

APPEARANCE:	H. S., self-represented
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