



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. S. v Canada Employment Insurance Commission*, 2019 SST 123

Tribunal File Number: AD-19-68

BETWEEN:

R. S.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: February 12, 2019

DECISION AND REASONS

DECISION

[1] The Tribunal refuses leave to appeal to the Appeal Division.

OVERVIEW

[2] The Applicant, R. S. (Claimant), filed a claim for sickness benefits, and the Respondent, the Canada Employment Insurance Commission (Commission), established a benefit period and paid him 15 weeks of sickness benefits. The Commission later determined that the Claimant was disentitled from receiving sickness benefits because he had not provided the requested medical evidence to prove that he was unable to work for medical reasons. This decision generated an overpayment of benefits. The Claimant requested reconsideration of the Commission's decision, and the Commission maintained its decision. The Claimant appealed to the Tribunal's General Division.

[3] The General Division found that the Claimant had not demonstrated that he was incapable of working during the period in which he had received sickness benefits. Therefore, the Claimant was not entitled to receive sickness benefits.

[4] The Claimant now seeks leave to appeal the General Division's decision to the Appeal Division. The Claimant stated that he does not understand why the Commission waits until after it has paid benefits to ask whether a claimant meets the requirements of the *Employment Insurance Regulations* (EI Regulations). He submitted a letter from his employer dated after the General Division hearing and stating that his employer could not accommodate his work limitations.

[5] The Tribunal must decide whether the Claimant has raised some reviewable error of the General Division on which the appeal might succeed.

[6] The Tribunal refuses leave to appeal because the Claimant's appeal has no reasonable chance of success.

ISSUE

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

ANALYSIS

[8] Section 58(1) of the *Department of Employment and Social Development Act* (DESD Act) states the only grounds of appeal of a General Division decision. These reviewable errors are that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; erred in law in making its decision, whether or not the error appears on the face of the record; or based its decision on an erroneous finding of fact that it had made in a perverse or capricious manner or without regard for the material before it.

[9] An application for leave 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 on the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove his case; instead, he must establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, the Claimant must show that there is arguably some reviewable error on which the appeal might succeed.

[10] Therefore, before leave can be granted, the Tribunal must be satisfied that the reasons for appeal fall within any of the grounds of appeal mentioned above and that at least one of the reasons has a reasonable chance of success.

[11] This means that the Tribunal must be in a position to determine, in accordance with section 58(1) of the DESD Act, whether there is an issue of natural justice, jurisdiction, law, or fact that may lead to the setting aside of the General Division decision under review.

Issue: Does the Claimant's appeal have a reasonable chance success based on a reviewable error the General Division may have made?

[12] In support of his application for leave to appeal, the Claimant stated that he does not understand why the Commission waits until after it has paid benefits to ask whether a claimant meets the requirements of the EI Regulations. He submitted a letter from his employer dated

after the General Division hearing that states that his employer could not accommodate his work limitations.

[13] To prove their inability to work because of illness, injury, or quarantine, a claimant must give the Commission a medical certificate completed by a medical doctor or other medical professional confirming the claimant's inability to work and stating the probable duration of the illness, injury, or quarantine.¹ In addition, the illness, injury, or quarantine must make the claimant incapable of performing the duties of their regular or usual employment or of other suitable employment.²

[14] The General Division found that the medical certificates the Claimant provided did not meet the requirements set out in section 40(1) of the EI Regulations because, while they mention a lower back injury, they do not mention the Claimant's inability to work or the probable duration of his illness. The medical certificates did not state that his illness or injury made him incapable of performing the duties of another suitable employment, either.

[15] Based on the evidence before it, the General Division had no choice but to conclude that the Claimant did not provide the medical evidence required under section 40(1) of the EI Regulations that would have made him eligible for sickness benefits.

[16] After reviewing the appeal file and the General Division decision and considering the Claimant's arguments in support of his request for leave to appeal, the Tribunal finds that the appeal has no reasonable chance of success. The Claimant has not set out reasons that fall into the grounds of appeal listed above that could possibly lead to the reversal of the disputed decision.

¹ EI Regulations, s 40(1).

² EI Regulations, s 40(4).

CONCLUSION

[17] The Tribunal refuses leave to appeal to the Appeal Division.

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	R. S., self-represented
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