



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *M. G. v. Canada Employment Insurance Commission*, 2019 SST 98

Tribunal File Number: AD-19-49

BETWEEN:

M. G.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: February 8, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, M. G. (Claimant), filed an application for caregiving benefits (also called “benefits for critically ill adults”) so that he could take care of his mother who had had coronary artery bypass surgery with postoperative complications. The Canada Employment Insurance Commission [(Commission)] refused to pay the Claimant benefits since the medical certificate filed in support of his application did not state that the patient’s life was at risk as a result of an illness or injury. The Claimant requested a reconsideration of this decision, but the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the Tribunal’s General Division.

[3] The General Division determined that the medical certificates the Claimant presented did not satisfy the criteria in the *Employment Insurance Act* (EI Act) and the *Employment Insurance Regulations* (EI Regulations) and that the Claimant was therefore ineligible to receive caregiving benefits.

[4] The Claimant now seeks leave from the Tribunal to appeal the General Division decision. He argues that the General Division ignored uncontradicted evidence and that it imposed evidentiary requirements higher than the balance of probabilities. Finally, he argues that there is no rational link between the evidence and the General Division’s findings.

[5] The Tribunal must decide whether there is an arguable case that the General Division made a reviewable error based on which the appeal might have a reasonable chance of success.

[6] The Tribunal refuses leave to appeal because none of the grounds of appeal that the Claimant has raised give the appeal a 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) specifies 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 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 of the case. 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 application for leave to appeal stage, the Claimant does not have to prove his case, but he must establish that his appeal has a reasonable chance of success. In other words, the Claimant must show that there is arguably some reviewable error based on which the appeal might succeed.

[10] The Tribunal will grant leave to appeal if it is satisfied that at least one of the grounds of appeal that the Claimant has raised 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 decision under review.

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

[12] In support of his application for leave to appeal, the Claimant argues that the General Division ignored uncontradicted evidence and that it imposed a higher standard of proof than the balance of probabilities. He argues that there is no rational link between the evidence and the General Division's findings.

[13] The EI Act states that caregiving benefits are payable to a family member of a “critically ill adult” who submits a medical certificate attesting to that fact.¹ It is an essential condition for receiving that type of benefits.

[14] The EI Regulations define what constitutes a critically ill adult: to satisfy that definition, the patient’s life must be at risk as a result of an illness or injury.²

[15] It is true that the evidence before the General Division shows that the Claimant’s mother needs a considerable amount of assistance. However, as decided by the General Division, the medical certificates the Claimant submitted do not meet the requirements of the EI Act and the EI Regulations because they attest that the patient’s life is not at risk as a result of an illness or injury.

[16] Unfortunately for the Claimant, the Federal Courts have held that the requirements of the EI Act do not allow any discrepancy and provide no discretion in its application.³ Any changes must come from Parliament.

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

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	Jean-Pierre Devost, Representative for the Applicant
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¹ *Employment Insurance Act* (EI Act), s 23.3(1).

² EI Act, s 1(7).

³ *Canada (Attorney General) v Levesque*, 2001 FCA 304; *Pannu v Canada (Attorney General)*, 2004 FCA 90.