



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *G. L. v Canada Employment Insurance Commission*, 2019 SST 209

Tribunal File Number: AD-18-722

BETWEEN:

**G. L.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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Leave to Appeal Decision by: Shu-Tai Cheng

Date of Decision: March 15, 2019

## **DECISION AND REASONS**

### **DECISION**

[1] Leave to appeal the decision made by the General Division of the Social Security Tribunal of Canada on October 4, 2018, is refused.

### **OVERVIEW**

[2] The Applicant, G. L., applied for the Employment Insurance “family caregiver benefit for adults.” The Respondent, the Canada Employment Insurance Commission, found that the medical certificate that the Applicant filed did not indicate that her sister was critically ill because of an illness or injury. As a result, the Applicant was not entitled to receive benefits.

[3] The Applicant submits that her sister was critically ill because she could not function on her own and that the medical certificate had explained the medical condition and the need for a family member to be present at all times.

[4] The Applicant appealed the Commission’s decision. The General Division found that the medical doctor for the Applicant’s sister did not indicate that her life was at risk, and he did not state that her sister was critically ill within the meaning of the applicable regulations.

[5] In her application for leave to appeal, the Applicant submitted that the General Division based its decision on material errors regarding the facts of the appeal file.

[6] The appeal has no reasonable chance of success because the Applicant has not raised any arguable case that the General Division may have made a reviewable error.

### **ISSUE**

[7] Is there an arguable case that the General Division erred when it found that the evidence does not show that the adult in question was critically ill according to the applicable act and regulations?

## ANALYSIS

[8] An applicant must seek leave to appeal a General Division decision. The Appeal Division must either grant or refuse leave to appeal, and an appeal can proceed only if leave is granted.<sup>1</sup>

[9] Before I can grant leave to appeal, I must decide whether the appeal has a reasonable chance of success. In other words, is there an arguable ground on which the Applicant might succeed on appeal?<sup>2</sup>

[10] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success<sup>3</sup> based on a reviewable error. The only reviewable errors are the following:<sup>4</sup> the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; it erred in law in making its decision, whether or not the error appears on the face of the record; or it 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.

**Is there an arguable case that the General Division erred when it found that the evidence does not show that the adult in question was critically ill according to the applicable act and regulations?**

[11] No, there is no arguable case that the General Division erred.

[12] The *Employment Insurance Act* and the *Employment Insurance Regulations* define “critically ill adult” as “a person who is 18 years of age or older [...] whose baseline state of health has significantly changed and whose life is at risk as a result of an illness or injury.” The term “critically ill adult” must be interpreted based on the definition in the Act and Regulations, not based on a claimant’s understanding of the wording.

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<sup>1</sup> *Department of Employment and Social Development Act* (DESDA), ss 56(1) and 58(3).

<sup>2</sup> *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12; *Murphy v Canada (Attorney General)*, 2016 FC 1208 at para 36; *Glover v Canada (Attorney General)*, 2017 FC 363 at para 22.

<sup>3</sup> DESDA, s 58(2).

<sup>4</sup> DESDA, s 58(1).

[13] Therefore, the legislation requires the following two conditions to be met: the baseline state of health has significantly changed **and** the life is at risk as a result of an illness or injury.

[14] The Applicant submits that the General Division should have considered the following: the medical certificate indicates that her sister was critically ill and explains her medical condition and that she is unable to be left alone; having a medical doctor answer “Yes” to the question of whether “[t]he patient’s life is at risk as a result of illness or injury” does not make sense; and her sister’s medical doctor talked to one of the Respondent’s agents to explain.

[15] However, on reading the General Division decision, I see that the General Division noted the contents of the medical certificate and the following:

[Translation]

At the hearing, the Appellant stated that this concept of “life at risk” is subject to interpretation and that medical doctors will not want to “endorse” this statement out of fear of reprisal because, if a person’s life is at risk and they are discharged from hospital, medical doctors are liable. She argued that the Act should be amended to take this into account.<sup>5</sup>

The medical doctor for the Appellant’s sister did not indicate that her life was at risk and did not state that the Appellant’s sister was critically ill within the meaning of the Regulations. The Tribunal must apply the Act and the Regulations, and this requirement is restrictive. For an adult to be found critically ill, a medical certificate must state it. The form provided [...] asks the medical doctor [...] to indicate whether the adult is critically ill by answering yes or no to the question of whether “[t]he patient’s life is at risk as a result of illness or injury.” The evidence shows that the medical doctor indicated “No” as a response. The Tribunal cannot therefore find that the baseline state of health of the Appellant’s sister significantly changed and that her life was at risk as a result of an illness or injury.<sup>6</sup>

To satisfy the eligibility conditions for family caregiver benefits for adults, the Appellant must provide a medical certificate issued by a medical doctor [...] indicating that the adult in question is critically ill. However, the medical certificate that the Appellant submitted shows that the medical doctor indicated that her sister’s life was not at risk, and the certificate does

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<sup>5</sup> General Division decision at para 11.

<sup>6</sup> *Ibid.* at para 13.

not show that the Appellant's sister was critically ill within the meaning of the Regulations.<sup>7</sup>

[16] Contrary to the Applicant's submission, the General Division considered her arguments.

[17] The Applicant is repeating the arguments that she presented to the General Division but has not raised any arguable case that the General Division may have based its decision on a reviewable error.

[18] Furthermore, the condition for meeting the legal definition of a critically ill adult consists of providing a medical certificate stating that the baseline state of health of the person in question has significantly changed **and** that their life is at risk as a result of an illness or injury. In this case, the medical certificate stated that the life of the adult in question was not at risk. As a result, the legal test could not be met.

[19] I have also reviewed the evidence on file. There is no indication that the General Division overlooked or misinterpreted important evidence. I also find that the General Division did not fail to observe a principle of natural justice or otherwise act beyond or refuse to exercise its jurisdiction in coming to its decision. The Applicant has not raised any error of law or any erroneous finding of fact that the General Division may have made in a perverse or capricious manner or without regard for the material before it.

[20] For these reasons, I find that the appeal does not have a reasonable chance of success.

## **CONCLUSION**

[21] Leave to appeal is refused.

Shu-Tai Cheng  
Member, Appeal Division

REPRESENTATIVE:	G. L., self-represented
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<sup>7</sup> *Ibid.* at para 15.