



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *F. A. v Canada Employment Insurance Commission*, 2019 SST 309

Tribunal File Number: AD-19-113

BETWEEN:

F. A.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Valerie Hazlett Parker

Date of Decision: April 1, 2019

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] F. A. (Claimant) went to a Service Canada Centre and told staff that she was leaving Canada to care for her mother who was recovering from surgery. The staff person provided the Claimant with forms for Employment Insurance compassionate care benefits.¹ The Claimant had the required medical form completed by the doctor in Costa Rica, who indicated that the Claimant's mother was not at risk of dying within the next 26 weeks, but that she required care by a family member. The Claimant submitted the forms for compassionate care benefits. The Canada Employment Insurance Commission refused the application. It suggested that the Claimant might qualify for the family caregiver benefit for adults² and provided these forms to the Claimant. The Claimant did not complete and submit these forms.

[3] The Claimant appealed the Commission's decision to refuse the compassionate care benefits to the Tribunal. The Tribunal's General Division dismissed the appeal, finding that the Claimant did not qualify for the compassionate care benefits and that whether she qualified for family caregiver benefit for adults was outside of the Tribunal's jurisdiction. Leave to appeal the General Division's decision is refused because the appeal does not have a reasonable chance of success based on the General Division having made an error in law or having based its decision on an erroneous finding of fact.

ISSUES

[4] Does the appeal have a reasonable chance of success because the General Division made an error in law by failing to consider the doctrine of officially induced error?

¹ *Employment Insurance Act* s. 23.1 provides for benefits for a person to care for a family member who has a serious medical condition with a significant risk of death within 26 weeks

² *Employment Insurance Act* s. 23.3 provides benefits for a person to care for a critically ill family member who requires care or support from a family member

[5] Does the appeal have a reasonable chance of success because the General Division based its decision on an erroneous finding of fact regarding the Commission providing forms for family caregiver benefits?

ANALYSIS

[6] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operation. It sets out only three grounds of appeal that the Appeal Division can consider. They are that the General Division failed to observe a principle of natural justice or made a jurisdictional error, made an error in law, or based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it.³ In addition, leave to appeal is to be refused if the appeal has no reasonable chance of success.⁴ Therefore, to be granted leave to appeal the Claimant must present a ground of appeal that falls under the DESD Act and upon which the appeal has a reasonable chance of success. The Claimant's grounds of appeal are considered below in this context.

Issue 1: Doctrine of officially induced error

[7] The Claimant argues that the General Division erred when it made its decision because it failed to consider that the Commission (through Service Canada staff) provided her with the wrong forms to be completed by the doctor, which resulted in her applying for benefits for which she did not qualify. Therefore, she argues, her error was officially induced, and the General Division failed to consider this when making its decision. However, the General Division decision states

The Tribunal considered the Representative's argument of "officially induced error" based on the action of the Service Canada agent providing him and the Claimant with the wrong form. However as it has been established in *Granger (A-684-85)* "It is equally certain that any commitment which the Commission or its representatives may make, whether in good or bad faith, to act in a way other than that prescribed by the Act would be absolutely void and contrary to public order." While the Tribunal is sympathetic to the Claimant's position, and recognizes her frustration, there is no legal basis for the Tribunal to allow EI compassionate care benefits or EI critically ill adult benefits.⁵

³ DESD Act s. 58(1)

⁴ DESD Act s. 58(2)

⁵ General Division decision para. 14

The General Division clearly considered this and provided reasons that this argument did not succeed. The decision also states that the Commission later provided the Claimant with the forms for family caregiver benefits and encouraged her to apply for this, but the Claimant did not.⁶ The General Division considered the issue of officially induced error. The Claimant's disagreement with the General Division's decision in this regard is not a ground of appeal under the DESD Act. Leave to appeal cannot be granted on this basis.

Issue 2: Forms provided by the Commission

[8] The Claimant also argues that she refused to complete the forms for family caregiver benefits because it would be extremely difficult to have another medical form completed by a doctor in Costa Rica,⁷ and because it would conceal the mistake may by Service Canada staff. This may be so. However, the failure to complete these forms and the reasons for the refusal do not point to any error made by the General Division. I have read the General Division decision and the written record. The General Division did not overlook or misconstrue any important information. The appeal has no reasonable chance of success on the basis that the General Division based its decision on an erroneous finding of fact.

[9] In addition, the General Division can only make a decision based on an application that has been considered by the Commission initially and on reconsideration. Therefore, without the Claimant having made an application for family caregiver benefits, the General Division could not decide whether she is entitled to such benefits.⁸ The appeal has no reasonable chance of success because the General Division failed to consider the Claimant's entitlement to family caregiver benefits.

CONCLUSION

[10] I am sympathetic to the Claimant's circumstances. However, leave to appeal cannot be granted on the basis of sympathy or extenuating circumstances.

⁶ *Ibid* para. 10, 12

⁷ General Division decision para. 10

⁸ *Ibid.* para. 13

[11] Leave to appeal is refused because the Claimant has not presented a ground of appeal that falls under the DESD Act and upon which the appeal has a reasonable chance of success.

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVE:	F. A. Self-represented
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