



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *B. M. v Canada Employment Insurance Commission*, 2019 SST 618

Tribunal File Number: AD-19-341

BETWEEN:

B. M.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Jude Samson

Date of Decision: June 28, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] B. M. is the Claimant in this case. He spent this past winter in Florida, and says that he was entitled to Employment Insurance (EI) regular benefits while he was away.

[3] As a general rule, people cannot receive EI benefits for periods spent outside of Canada.¹ There is an exception to this rule, however, for some people who are living “in a state of the United States that is contiguous to Canada”.² At the General Division level, the Claimant argued that the ease of travel between Florida and his home province means that there is barely any difference between living in Florida and a state that shares a border with Canada.

[4] The General Division disagreed. It concluded that Florida is not contiguous to Canada, and dismissed the Claimant’s appeal.

[5] The Claimant now wants to appeal the General Division decision to the Tribunal’s Appeal Division, but he first needs leave (or permission) to appeal. I have concluded, however, that the Claimant’s appeal has no reasonable chance of success. As a result, I am refusing leave to appeal. These are the reasons for my decision.

ISSUES

[6] As part of this decision, I asked and answered the following questions:

- a) Could the General Division have made an error of law when it concluded that Florida is not contiguous to Canada?

¹ Section 37(b) of the *Employment Insurance Act* establishes this general rule. Section 37(b), and other relevant legal provisions, can be found at the end of this decision.

² Section 55(6)(a) of the *Employment Insurance Regulations* describes this exception to the general rule.

- b) Could the General Division have misinterpreted or failed to properly consider relevant evidence?

ANALYSIS

The Appeal Division's Legal Framework

[7] The Tribunal follows the law and procedures set out in the *Department of Employment and Social Development Act* (DESD Act). As a result, this appeal is following a two-step process: the leave to appeal stage and the merits stage. The appeal will move on to the merits stage unless it has no reasonable chance of success.³

[8] The legal test that the Claimant needs to meet at the leave to appeal stage is a low one: Is there any arguable ground on which the appeal might succeed?⁴ To decide this question, I will focus on whether the General Division could have committed an error of law, which is one of the three errors (or grounds of appeal) recognized under the DESD Act.⁵

Issue 1: Could the General Division have made an error of law when it concluded that Florida is not contiguous to Canada?

[9] I have answered no to this question.

[10] In his application to the Appeal Division, the Claimant argues that the expression “contiguous to Canada” is open to interpretation. Indeed, he advances many reasons why the exception in section 55(6)(a) of the *Employment Insurance Regulations* should not be restricted to just those states that share a border with Canada.

[11] When deciding that Florida is not contiguous to Canada; however, the General Division relied on a decision from the Federal Court of Appeal.⁶ Since the Federal Court of Appeal has already decided the precise question raised by the Claimant, the General Division had no choice but to follow Court's decision.

³ DESD Act, ss 58(2) and 58(3).

⁴ *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12; *Ingram v Canada (Attorney General)*, 2017 FC 259 at para 16.

⁵ Section 58(1) of the DESD Act defines the three errors (or grounds of appeal) that I am able to consider.

⁶ *Canada (Attorney General) v Bendahan*, 2012 FCA 237 at para 4.

[12] As a result, I have concluded that the Claimant's argument has no reasonable chance of success.

Issue 2: Could the General Division have misinterpreted or failed to properly consider relevant evidence?

[13] I have answered no to this question.

[14] Regardless of the conclusion above, I must go beyond the four corners of the application to the Appeal Division and consider whether the General Division might have misinterpreted or failed to properly consider relevant evidence.⁷ If this is the case, then I will grant leave to appeal regardless of any technical problems with the Claimant's written materials.

[15] After reviewing the documentary record and examining the decision under appeal, I am satisfied that the General Division neither misinterpreted nor failed to properly consider any relevant evidence.

CONCLUSION

[16] I sympathize with the Claimant's circumstances, especially the need for the Claimant and his wife to spend their winters in Florida because of her chronic illness. Nevertheless, having concluded that the Claimant's appeal has no reasonable chance of success, I have no choice but to refuse leave to appeal.

Jude Samson
Member, Appeal Division

REPRESENTATIVE:	B. M., self-represented
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⁷ *Griffin v Canada (Attorney General)*, 2016 FC 874 at para 20; *Karadeolian v Canada (Attorney General)*, 2016 FC 615 at para 10.

Relevant Legal Provisions

Department of Employment and Social Development Act

Grounds of appeal

58 (1) The only grounds of appeal are that

- (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.

Criteria

(2) Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.

Decision

(3) The Appeal Division must either grant or refuse leave to appeal.

Employment Insurance Act

Prison inmates and persons outside Canada

37 Except as may otherwise be prescribed, a claimant is not entitled to receive benefits for any period during which the claimant

- (a) is an inmate of a prison or similar institution; or
- (b) is not in Canada.

Employment Insurance Regulations

Claimants Not In Canada

55 (1) Subject to section 18 of the Act, a claimant who is not a self-employed person is not disentitled from receiving benefits for the reason that the claimant is outside Canada

[...]

(6) Subject to subsection (7), a claimant who is not a self-employed person and who resides outside Canada, other than a major attachment claimant referred to in subsection (5), is not disentitled from receiving benefits for the sole reason of their residence outside Canada if

- (a) the claimant resides temporarily or permanently in a state of the United States that is contiguous to Canada and
 - (i) is available for work in Canada, and
 - (ii) is able to report personally at an office of the Commission in Canada and does so when requested by the Commission;