



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *AH v Canada Employment Insurance Commission*, 2021 SST 96

Tribunal File Number: AD-21-53

BETWEEN:

A. H.

Applicant / Claimant

and

Canada Employment Insurance Commission

Respondent / Commission

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Janet Lew

Date of Decision: March 15, 2021

DECISION AND REASONS

DECISION

[1] The Application to the Appeal Division is refused because the appeal does not have a reasonable chance of success.

OVERVIEW

[2] The Claimant A. H. is appealing the General Division's decision of January 22, 2021. The General Division found that the Claimant was disentitled from receiving Employment Insurance benefits, for two reasons. One, the General Division found that the Claimant was and continues to be outside of Canada. And, two, it found that he did not prove that he was available for work.

[3] The Claimant argues that the General Division made an important error of fact. He was visiting family overseas. He had a scheduled return flight home, but got stranded because of the pandemic. There has also been a travel ban so he has been unable to make any alternative travel arrangements. He has not been able to return to Canada since. Even so, he has been able to continue looking for work. He states that most interviews and jobs have moved online, so this does not affect his availability.

[4] An appeal before the Appeal Division is a two-step process. At this first step, an applicant has to get permission from the Appeal Division before they can move on to the next and final step. This means they have to show that the appeal has a reasonable chance of success. Having a reasonable chance of success is the same thing as having an arguable case.¹

[5] I am not satisfied that the appeal has a reasonable chance of success. Therefore, I am not granting permission to the Claimant to move ahead with his appeal. So, the application to the Appeal Division is refused.

¹ *Fancy v Canada (Attorney General)*, 2010 FCA 63.

ISSUES

[6] Is there an arguable case that the General Division made an important error of fact regarding the Claimant's absence outside of Canada and his availability for work?

ANALYSIS

[7] Before the Claimant can move on to the next stage of the appeal, I have to be satisfied that the General Division committed the type of error that is listed under section 58(1) of the *Department of Employment and Social Development Act*. These errors are where the General Division:

- (a) Failed to make sure the process was fair;
- (b) Failed to decide an issue that it should have decided, or decided an issue that it should not have decided;
- (c) Made an error of law; or
- (d) Based its decision on an important factual error (perverse, capricious, or without regard for the evidence).

[8] The Claimant argues that the General Division made an important error of fact at paragraph 26.² There, the General Division wrote that a travel ban unduly limits the Claimant's chances of returning to the labour market because it prevents him from attending job interviews and accepting jobs in Canada.

[9] The Claimant argues that the General Division overlooked the fact that working requirements have evolved. They have evolved under the pandemic. He notes that employers are conducting job interviews online and, in some industries such as his, employees work from home. He argues that the pandemic has normalized remote work. He argues that, a claimant can be available for work remotely, even if they are outside the country.

² Claimant's email of March 8, 2021, at AD3-1.

[10] The Claimant suggests that, by overlooking this fact, the General Division failed to appreciate that he met the availability requirements under the *Employment Insurance Act*, even if he was out of the country.

[11] The Claimant has been going online to apply for jobs. He has also been in communication with his former employer regarding any possible job opportunities. He claims that if any potential employer were to offer him a position, he would explain his situation and “negotiate to return in more than 48 hours.”³

[12] The General Division was aware of the Claimant’s circumstances. It noted the Claimant’s testimony that he intended to return to Canada by the end of March 2020. It also noted that, although the Claimant has been stuck overseas under a travel ban, he has been able to go online to look for work.

[13] However, it is irrelevant whether employers now conduct interviews online, or that many workers may now work remotely. This is because the requirements under the *Employment Insurance Act* regarding availability have not changed.

[14] The General Division correctly assessed whether the Claimant was available for work and unable to obtain suitable employment. The General Division accepted that the Claimant wanted to return to work and that he had made reasonable efforts to find work. However, it correctly found that the Claimant was limited in being able to return to the labour market at that time, even if it was through no fault of his own. The General Division was entitled to make this finding, based on the evidence before it, given the requirements under the *Employment Insurance Act*.

[15] Setting aside the issue of availability, the Claimant was also disentitled to receive Employment Insurance benefits because he was out of the country and did not fall within any of the exceptions.

[16] The General Division correctly determined that the Claimant did not fall within any of the exceptions to the general rule that a claimant is not entitled to receive benefits when they are

³ Application to the Appeal Division – Employment Insurance, at AD1-5.

not in Canada. The General Division recognized that the *Employment Insurance Regulations* have not been amended to broaden the exceptions for being outside Canada. The exceptions have not been extended to include COVID-19-related travel restrictions.

[17] For many, the *Employment Insurance Act* and the Regulations have not kept pace with evolving societal changes. But, it is beyond the General Division's authority to address or resolve this issue.

CONCLUSION

[18] The Claimant does not have an arguable case. The Application to the Appeal Division is therefore refused.

Janet Lew
Member, Appeal Division

REPRESENTATIVE:	A. H., Self-represented
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