



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *AH v Canada Employment Insurance Commission*, 2021 SST 290

Tribunal File Number: AD-21-167

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: June 22, 2021

## DECISION AND REASONS

### DECISION

[1] The appeal filed by the Claimant, A. H., does not have a reasonable chance of success. For that reason, I am not granting the application to the Appeal Division.

### OVERVIEW

[2] The Claimant is appealing the General Division decision. The General Division decided that the Claimant was disentitled from receiving Employment Insurance benefits from December 14, 2020 to March 15, 2021, while he was outside Canada.

[3] Attending the funeral of an immediate family member qualifies as an exception to the general rule that a claimant is disentitled from receiving benefits while outside Canada. The Claimant left Canada on December 6, 2020, to attend his grandmother's funeral. The Canada Employment Insurance Commission accepted that the Claimant was entitled to Employment Insurance benefits for a seven-day period from December 7, 2020 to December 13, 2020, to attend his grandmother's funeral.

[4] The Claimant argued that he was entitled to more benefits. Several immediate family members passed away during the same trip. He attended their funerals too. But, the General Division found that the Claimant did not qualify for any additional exceptions.<sup>1</sup> The General Division found that the Claimant was limited to just one exception.

[5] The Claimant argues that the General Division misinterpreted the law. He claims that the law lets him combine or accumulate exceptions. He calculates that he is entitled to receive 60 days of benefits from December 14, 2020 to March 15, 2021.

---

<sup>1</sup> The Claimant left Canada on December 6, 2020. He left to attend his grandmother's funeral. Attending a funeral of a family member qualified as an exception. The Commission accepts that the Claimant was entitled to Employment Insurance benefits for a seven-day period to December 13, 2020, to attend his grandmother's funeral.

[6] I have to decide whether the appeal has a reasonable chance of success.<sup>2</sup> Having a reasonable chance of success is the same thing as having an arguable case.<sup>3</sup>

[7] I am not satisfied that there is an arguable case that the General Division made a legal error. Therefore, I am refusing permission to the Claimant to move ahead with his appeal. This ends the Claimant's appeal.

## ISSUE

[8] Is there an arguable case that the General Division made a legal error when it decided that the Claimant could not combine exceptions?

## ANALYSIS

[9] There is a two-step process for most appeals at the Appeal Division. This appeal falls into that category.

[10] At the first step, an applicant has to get permission from the Appeal Division before they can move on to the second and final step. Before the Appeal Division will grant permission to applicants, they have to show that the appeal has a reasonable chance of success. In particular, applicants have to show that the General Division made a certain type of error.<sup>4</sup> These errors are about whether 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. (The error has to be perverse, capricious, or without regard for the evidence.)

---

<sup>2</sup> Under section 58(1) of the *Department of Employment and Social Development Act*, I am required to refuse to grant leave to appeal (permission to move ahead with the appeal) if I am satisfied "that the appeal has no reasonable chance of success."

<sup>3</sup> *Fancy v Canada (Attorney General)*, 2010 FCA 63.

<sup>4</sup> See section 58(1) of the *Department of Employment and Social Development Act*.

[11] At the final step, the Appeal Division will make a decision on the merits of the appeal.

[12] The Claimant argues that the General Division misinterpreted the law. He argues that he qualifies for exceptions to the general rule that one is disentitled from receiving benefits if they are outside Canada. He argues that he is not limited to just one exception and that he can combine exceptions.

[13] The Claimant argues that exceptions are available if a claimant attends a funeral of a family member. In his case, he left Canada to attend his grandmother's funeral. While outside Canada, his "uncle and grandparents passed away ..."<sup>5</sup> In particular, he says that his "3 uncles and 2 uncles of [his] wife passed away."<sup>6</sup>

[14] The Claimant argues that a claimant is entitled to receive 10 days of benefits for each funeral. So, he calculates that he is entitled to receive 60 days of benefits. This is on top of the benefits he received for a seven-day period up to December 2020, when he attended his grandmother's funeral.

[15] The General Division was aware that the Claimant had suffered family tragedies and that two of his uncles and a wife's uncle passed away.<sup>7</sup> The General Division also noted that the Claimant's mother had a heart attack, and that he contracted COVID-19 and was hospitalized. He also faced travel restrictions, which further delayed his return to Canada.

[16] The General Division acknowledged that the law includes exceptions for claimants who are outside Canada to visit ill family members and to attend family-member funerals.

[17] But, the General Division found that "the law also says that a claimant cannot combine the exceptions except to visit a sick or critically ill family member and to attend that person's funeral." The General Division concluded that the exceptions were unavailable in the cases where his uncles' passed away or his mother suffered a heart attack.

[18] The General Division cited section 55(1.1) of the *Employment Insurance Regulations*. That section reads:

---

<sup>5</sup> Claimant's email dated June 13, 2021.

<sup>6</sup> *Ibid.*

<sup>7</sup> General Division decision, at para. 9.

Only the periods set out in paragraphs (1)(b) and (d) may be cumulated during a single trip outside Canada, and only if the member of the claimant's immediate family whom the claimant visits under paragraph (1)(d) is the person whose funeral the claimant attends under paragraph (1)(b).

[19] The exception under paragraph (1)(b) is available when there is a funeral of a family member, which includes grandparents and uncles of either a claimant or their spouse. The exception under paragraph (1)(d) is available when the claimant visits a member of their immediate family who is seriously ill or injured.

[20] However, the section allows for only one instance when a claimant may combine exceptions. A claimant may combine exceptions when the circumstances described in paragraph (1)(d) and paragraph (1)(b) of the Regulations exist.

[21] The Claimant's circumstances do not fall into paragraph (1)(d), so he cannot combine paragraphs (1)(b) and (1)(d).

[22] The Claimant attended several funerals of family members. But, section 55(1.1) of the Regulations does not let a claimant cumulate or combine any other exceptions. The section also does not let a claimant cumulate more than one period for the same class of exception, such as when a claimant attends several funerals during the same trip while outside Canada. This is how the section has to be interpreted because of the word, "only" in section 55(1.1) of the Regulations.

[23] It is clear that section 55(1.1) of the Regulations specifies only one set of circumstances when a claimant may cumulate exceptions. Multiple exceptions are not available to the Claimant. And, as the General Division noted, it does not have any discretionary power (and neither does the Appeal Division) to grant further exceptions or to allow additional Employment Insurance benefits.

[24] The Claimant's appeal does not have a reasonable chance of success.

**CONCLUSION**

[25] The Application to the Appeal Division is refused. This ends the Claimant's appeal.

Janet Lew  
Member, Appeal Division

REPRESENTATIVE:	A. H., Self-represented
-----------------	-------------------------