



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *IS v Canada Employment Insurance Commission*, 2021 SST 269

Tribunal File Number: AD-21-193

BETWEEN:

I. S.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: June 11, 2021

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] The Applicant (Claimant) applied for special benefits to be able to care for her ill husband. The Canada Employment Insurance Commission (Commission) denied the Claimant benefits because the medical certificate filed in support of her application did not mention that her husband's life was at risk because of an illness or injury. The Claimant requested a reconsideration of that decision, but the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the Tribunal's General Division.

[3] The General Division determined that the medical certificate the Claimant presented did not meet the requirements under the *Employment Insurance Act* (EI Act) and *Employment Insurance Regulations* (EI Regulations) and that the Claimant was therefore not eligible to receive family caregiver benefits.

[4] The Claimant now seeks leave to appeal the General Division decision. She disagrees with the General Division decision. She submits that her husband needed full time care and could not live without her assistance. She argues that refusing her benefits is inconsistent with the purpose of the family caregiver benefits program.

[5] I must decide whether there is an arguable case that the General Division made a reviewable error based on which the appeal has a reasonable chance of success.

[6] I refuse leave to appeal because the Claimant has not raised a ground of appeal based on which the appeal has a reasonable chance of success.

ISSUE

[7] Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

ANALYSIS

[8] Section 58(1) of the *Department of Employment and Social Development Act* specifies the only grounds of appeal of a General Division decision. These reviewable errors are that:

1. The General Division hearing process was not fair in some way.
2. The General Division did not decide an issue that it should have decided. Or, it decided something it did not have the power to decide.
3. The General Division based its decision on an important error of fact.
4. The General Division made an error of law when making its decision.

[9] An application for leave to appeal is a preliminary step to a hearing on the merits. It is an initial hurdle for the Claimant to meet, but it is lower than the one that must be met on the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove her case but must establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, that there is arguably some reviewable error upon which the appeal might succeed.

[10] Therefore, before I can grant leave, I must be satisfied that the reasons for appeal fall within any of the above-mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success.

Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

[11] In support of her application for leave to appeal, the Claimant submits that she disagrees with the General Division decision. She argues that her husband needed full time care and could not live without her assistance. She submits that refusing her benefits is inconsistent with the purpose of the family caregiver benefits program.

[12] I note that the Appeal Division has ruled on this issue on several occasions.¹

[13] The EI Act provides that family caregiver benefits for adults are payable to a family member of a “critically ill adult” who presents a medical certificate supporting this fact.² It is an essential requirement to receive this type of benefit.

[14] The EI Regulations clearly define what constitutes a critically ill adult. To meet this definition, the patient’s life must be at risk because of an illness or injury.³

[15] It is true that the evidence before the General Division demonstrates that the Claimant’s husband needed assistance. However, as the General Division decided, the medical certificate the Claimant presented does not meet the requirements of the EI Act and EI Regulations since it shows that the patient’s life is not at risk because of an illness or injury.⁴

[16] The Federal Court of Appeal has established that the requirements of the EI Act do not allow discrepancy and grant me no discretion in its application.⁵

[17] I understand the Claimant’s position when she submits that the eligibility requirements are inconsistent with the purpose of the family caregiver benefits program. However, any change to the EI Act must come from Parliament.

[18] I find that the Claimant has not raised any issue of fact, law, or jurisdiction that could justify setting aside the decision under review.

[19] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for leave to appeal, I have no choice but to find that the appeal has no reasonable chance of success.

¹ *P. D. v Canada Employment Insurance Commission*, 2020 SST 726; *MG v Canada Employment Insurance Commission*, 2019 SST 98; *MM v Canada Employment Insurance Commission*, 2019 SST 93.

² EI Act, s 23.3(1).

³ EI Regulations, s 1(7).

⁴ GD3-26.

⁵ *Canada (Attorney General) v Levesque*, 2001 FCA 304; *Pannu v Canada (Attorney General)*, 2004 FCA 90.

CONCLUSION

[20] Leave to appeal is refused

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	I. S., Self-represented
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