



Citation: *NK v Canada Employment Insurance Commission*, 2021 SST 777

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

**Applicant:** N. K.

**Respondent:** Canada Employment Insurance Commission

---

**Decision under appeal:** General Division decision dated November 12, 2021  
(GE-21-1881)

---

**Tribunal member:** Pierre Lafontaine

**Decision date:** December 22, 2021

**File number:** AD-21-413

## **Decision**

[1] Leave to appeal is refused. This means the appeal will not proceed.

## **Overview**

[2] The Applicant (Claimant) applied for Employment Insurance (EI) regular benefits and reported that he was out of Canada. The Respondent, the Canada Employment Insurance Commission (Commission), decided that the Claimant was disentitled from receiving EI regular benefits from March 2, 2021, to June 10, 2021, because he was out of Canada and not available for work. Upon reconsideration, the Commission maintained its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[3] The General Division found that the Claimant left Canada from February 22, to June 10, 2021. It found that the Claimant met one of the exceptions to visit seriously ill immediate family. The General Division concluded that the Commission correctly applied the exception to the first seven days the Claimant was outside Canada, from February 23, 2021, to March 1, 2021. It also concluded that the Claimant was not available for work within the meaning of the law from March 2, 2021, to June 10, 2021.

[4] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. He submits that he was available for work full-time while outside Canada from March 2, to June 10, 2021.

[5] I must decide whether there is some reviewable error of the General Division upon which the appeal might succeed.

[6] I am refusing leave to appeal because the Claimant's appeal has no 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 his 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 need to 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 his application for leave to appeal, the Claimant submits that the General Division made an important error of fact because he was available for work full-time while outside Canada from March 2, to June 10, 2021.

[12] There is no dispute that the Claimant left Canada from February 22, to June 10, 2021.

[13] The law stipulates without ambiguity that a claimant is not entitled to receive benefits for any period during which the claimant is not in Canada<sup>1</sup>, unless the claimant falls under one of the exceptions set out in in the regulations.<sup>2</sup>

[14] The Claimant met one of the exception to visit seriously ill immediate family. The Commission agreed to pay him benefits for the first seven days the Claimant was outside Canada, from February 23, 2021, to March 1, 2021. The requirement to demonstrate availability to work only applied to that week because the Claimant met that exception.<sup>3</sup>

[15] Therefore, the General Division correctly concluded that the Claimant is not entitled to benefits for the rest of the period he was not in Canada, from March 2, to June 10, 2021, because no other exceptions applied.

[16] After reviewing the appeal docket and the General Division's decision as well as considering the Claimant's arguments in support of his request for leave to appeal, I have no choice but to find that the appeal has no reasonable chance of success.

---

<sup>1</sup> Section 37(b) of the *Employment Insurance Act*.

<sup>2</sup> Section 55 of the *Employment Insurance Regulations*.

<sup>3</sup> *Canada (Attorney General) v Elyoumni*, 2013 FCA 151.

## **Conclusion**

[17] Leave to appeal is refused. This means the appeal will not proceed.

Pierre Lafontaine  
Member, Appeal Division