



Citation: *EB v Canada Employment Insurance Commission*, 2022 SST 153

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: E. B.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated January 28, 2022
(GE-21-2427)

Tribunal member: Pierre Lafontaine

Decision date: March 10, 2022

File number: AD-22-122

Decision

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

Overview

[2] The Applicant (Claimant) applied for regular benefits on June 11, 2017, and payments began. On October 23, 2017, he called the Respondent (Commission) to say that he had left Canada on October 6, 2017, to attend his grandmother's funeral. He said he was staying on to spend Christmas with his family. He returned to Canada on January 26, 2018.

[3] The Commission reviewed the Claimant's benefits and found out from the *Canada Border Services Agency* (CBSA) that he had left Canada on September 20, 2017. It then found that he had not reported his absence on his claim reports. So, it disentitled him from receiving benefits from September 20, 2017, to January 26, 2018.

[4] After the Claimant asked for a reconsideration, the Commission allowed benefits for the first seven days of his absence because he attended the funeral of a close family member. The Commission maintained two disentitlements for the rest of his trip for being outside Canada and not showing he was available for work. The Claimant appealed the reconsideration decision to the General Division because he went to visit his seriously ill grandmother before she died so he argued he should get a second week of benefits.

[5] The General Division found that the Claimant met the exception to visit his seriously ill grandmother but that he was not available for work within the meaning of the law. Therefore, he could not receive benefits for a second week.

[6] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. He submits that he called the Commission to inquire whether his claim was correct. He was told he did nothing wrong. He

puts forward that the Commission is asking him, years later, to repay monies that were initially approved. He puts forward that he is penalized because the Commission made an error.

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

[8] I am refusing leave to appeal because the Claimant's appeal has no reasonable chance of success.

Issue

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

Analysis

[10] 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.

[11] 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.

[12] 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?

[13] In support of his application for leave to appeal, the Claimant submits that he called the Commission to inquire whether his claim was correct. He was told he did nothing wrong. He submits that the Commission is asking him, years later, to repay monies that were initially approved. He submits that he is penalized because the Commission made an error.

[14] There is no dispute that the Claimant left Canada from September 20, 2017, to January 26, 2018.

[15] The law stipulates without ambiguity that a claimant is not entitled to receive benefits for any period during which the claimant is not in Canada¹, unless the claimant falls under one of the exceptions set out in in the regulations.²

[16] The General Division found that the Claimant met the exception to visit seriously ill immediate family. It then correctly stated that the Claimant still had to demonstrate his availability to work to receive benefits for that week.³

[17] In the context of the present case, the Claimant had to, at the very least, demonstrate that he had made arrangements so that he could be reached during his absence from Canada if he was offered a job.

¹ Section 37(b) of the *Employment Insurance Act*.

² Section 55 of the *Employment Insurance Regulations*.

³ *Canada (Attorney General) v Elyoumni*, 2013 FCA 151.

[18] The General Division found that the Claimant did not make any such arrangements during his absence from Canada.⁴

[19] The General Division further found that the Claimant did not look for work until he returned to Canada on January 26, 2018, and not at any other time since his departure.

[20] For these reasons, the General Division concluded that the Commission correctly allowed the Claimant one week of EI regular benefits during his absence from Canada. I see no reviewable error upon which the appeal might succeed.

[21] Unfortunately, for the the Claimant, case law has clearly established that a claimant who receives an amount without being entitled to it, **even as a result of a mistake by the Commission**, is not excused from repaying the amount.⁵

[22] 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.

Conclusion

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

Pierre Lafontaine
Member, Appeal Division

⁴ See GD3-13 and GD3-15.

⁵ *Lanuzo v Canada (Attorney General)*, 2005 FCA 324.