



Citation: *SS v Canada Employment Insurance Commission*, 2022 SST 312

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: S. S.
Representative: S. Y.
Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated March 4, 2022
(GE-22-43)

Tribunal member: Charlotte McQuade
Decision date: April 29, 2022
File number: AD-22-205

Decision

[1] I am refusing permission (leave) to appeal. The appeal will not proceed.

Overview

[2] S. S. is the Claimant. She took a leave of absence from her job on July 20, 2021, to care for her mother. However, her mother passed away before she left. On July 22, 2021, the Claimant left Canada to attend her mother's funeral. She was unable to return to Canada until October 8, 2021, due to her own illness.

[3] The Claimant requested Employment Insurance (EI) sickness benefits from July 22, 2021, to October 8, 2021. Claimants who are not in Canada are not entitled to benefits unless they meet an allowed exception.¹ To meet an exception, claimants must be outside Canada for an allowed reason and must meet the availability requirements set out in the law.²

[4] The Canada Employment Insurance Commission (Commission) decided that the Claimant was not entitled to benefits for any part of her trip, as she did not meet any of the allowed exceptions.³ The Claimant appealed the Commission's decision to the Tribunal's General Division.

¹ See section 37(b) of the *Employment Insurance Act* (EI Act) which sets out this rule.

² See section 18 of the EI Act, which sets out the availability requirements.

³ These exceptions are set out in section 55 of the *Employment Insurance Regulations* (EI Regulations).

[5] The General Division decided that the Claimant met an exception for the first seven days of her trip: attending her mother's funeral.⁴ However, the General Division decided the Claimant was not entitled to benefits from July 30, 2021, to October 7, 2021, as she did not meet an exception for that period. The General Division also decided the Claimant was disentitled from July 20, 2021, to July 22, 2021, and July 30, 2021, to October 8, 2021, because she had not proven, but for her illness, she was otherwise available for work. The Claimant disagrees with the General Division's decision.

[6] The Claimant now asks for permission to appeal the General Division decision. She argues that the General Division made an error of law and an error of jurisdiction when it decided she was not entitled to benefits from July 30, 2021, to October 7, 2021. She has not objected to the other periods of disentitlement.

[7] I am refusing permission to appeal because I am satisfied the Claimant's appeal has no reasonable chance of success. This means the Claimant's appeal stops here.

Issues

[8] My decision focuses on the following issues: Is it arguable that the General Division made an error of law or jurisdiction when it decided the Claimant was not entitled to benefits from July 30, 2021, to October 7, 2021?

Analysis

[9] The Appeal Division has a two-step process. First, the Claimant needs permission to appeal. If permission is denied, the appeal stops there. If permission is given, the appeal moves on to step two. This second step is where the merits of the appeal are decided.

⁴ This exception is set out in section 55(1)(b) of the EI Regulations.

[10] I must refuse permission to appeal if I am satisfied that the appeal has no reasonable chance of success.⁵

[11] The law says that I can consider only certain types of errors.⁶ A reasonable chance of success means there is an arguable case that the General Division made at least one of those errors.⁷

It is not arguable that the General Division made an error of law

[12] The General Division did not make an error of law when it decided that the Claimant was not entitled to benefits from July 30, 2021, to October 7, 2021.

[13] There is no dispute about the following facts: the Claimant took a leave of absence from her employer from July 20, 2021, to October 8, 2021, with the intention of leaving Canada to care for her mother. The reason for the trip changed when her mother passed away. The Claimant left Canada on July 22, 2021, to attend her mother's funeral. The Claimant became ill and unable to work on July 22, 2021, and did not return to Canada until October 8, 2021.

[14] The Claimant asked the Commission for EI sickness benefits for the entire period of her trip outside Canada.

[15] Claimants who are not in Canada are not entitled to benefits unless they meet an allowed exception.⁸

⁵ Section 58(2) of the *Department of Employment and Social Development Act* (DESD Act), says that this is the test I have to apply.

⁶ Section 58(1) of the DESD Act describes the only errors I can consider when deciding whether to give or refuse permission to appeal. These errors are that the General Division breached natural justice, made an error of jurisdiction, made an error of law, or based its decision on an important error of fact.

⁷ See *Osaj v Canada (Attorney General)*, 2016 FC 115, which describes what a "reasonable chance of success" means.

⁸ These exceptions are set out in section 55 of the EI Regulations.

[16] The allowed reasons for being outside Canada are subject to the availability requirements of the *Employment Insurance Act* (EI Act). This means that in order to avoid disqualification, a claimant must be outside Canada for an allowed reason and meet the availability criteria.⁹

[17] To meet the availability criteria for sickness benefits, a claimant must show that, but for their illness, they would otherwise be available for work.¹⁰

[18] The General Division decided that the Claimant was not disqualified from benefits for the first seven days of her trip because she was outside Canada for an allowed reason, to attend her mother's funeral, and she had shown that, but for her illness, she was otherwise available for work for those seven days.

[19] However, the General Division decided that the Claimant was not entitled to benefits from July 30, 2021, to October 7, 2021, because she did not meet any of the allowed reasons for being outside Canada and she had not shown that, but for her illness, she was otherwise available for work.

[20] The Claimant argues that the General Division erred in its conclusion that she was not entitled to benefits from July 30, 2021, to October 7, 2021.

– **The General Division did not misinterpret section 37(b) of the EI Act**

[21] The Claimant submits in her application to the Appeal Division that the General Division misinterpreted section 37(b) of the EI Act.

[22] Section 37(b) of the EI Act says that, "except as may otherwise be prescribed" a claimant is not entitled to receive benefits for any period during which the claimant is not in Canada.

⁹ See *Canada (Attorney General) v Elyoumni*, 2013 FCA 151.

¹⁰ See section 18(1)(b) of the EI Act.

[23] The Claimant submits that the phrase, “except as may otherwise be prescribed” refers to section 18 of the EI Act. She says section 18 of the EI Act “prescribes” its own conditions of disentitlement. I understand her argument to mean that if a person meets the conditions of section 18 of the EI Act, they should not be disentitled, even if not in Canada.

[24] Respectfully, I cannot agree. The term “prescribed” is defined in the EI Act to mean, “prescribed by the regulations or determined in accordance with rules prescribed by the regulations.”¹¹ In other words, the term is referring to the exceptions from disentitlement set out in the *Employment Insurance Regulations* (EI Regulations).

[25] The clear meaning of section 37(b) of the EI Act is that unless a claimant meets one of the allowed exceptions set out in section 55 of the EI Regulations, they are disentitled from benefits while outside of Canada.

[26] It is not arguable that the General Division misinterpreted section 37(b) of the EI Act. The General Division properly considered whether the Claimant met an exception in section 55 of the EI Regulations for the period she was outside Canada.

– **The Claimant’s availability is not relevant because she did not meet an allowed reason for being outside Canada**

[27] The Claimant’s arguments about the errors the General Division made in assessing her availability cannot affect the outcome.

[28] The Claimant submits that the General Division made an error in assessing whether she was otherwise available for work from July 30, 2021, to October 7, 2021. She says the General Division found that she had restricted herself to her current employer, while on a leave of absence. However, she maintains, this finding was inconsistent with the General Division’s finding that she was otherwise available in the same circumstances for the first seven days of her trip.

¹¹ Section 2(1) of the EI Act sets out this definition.

[29] The Claimant submits further that the General Division did not consider the fact that restricting herself to her current employer was not restricting her availability, given the exceptional nature of her claim. The Claimant points out her claim was made after the Canada Emergency Response Benefits ended and while the Claimant was on a leave of absence. She says it was obvious in such a situation she would not search for another employer.

[30] Even if a claimant meets one of the allowed reasons for being outside Canada, in order to avoid disqualification, the claimant must also meet the availability requirements of section 18 of the EI Act. This is because the exceptions in section 55 of the EI Regulations are “subject to section 18 of the Act.”

[31] However, the fact a claimant meets the availability requirements of section 18 of the EI Act is irrelevant unless the claimant is also outside Canada for an allowed reason, as provided for in section 55 of the EI Regulations.¹²

[32] The Claimant argued before the General Division that she met the exception from disqualification for reason her most recent interruption of earnings before making her claim for benefits was from insurable employment outside Canada.¹³ The General Division decided the Claimant did not meet this exception, as she did not establish her EI claim with insured hours from employment outside Canada. The Claimant does not challenge this determination in her application to the Appeal Division.

[33] The Claimant did not argue before the General Division that she met any other allowed reason for being outside Canada and there is no evidence on the record that suggests the General Division failed to consider any relevant exceptions. Given the Claimant did not meet an allowed reason for being outside Canada, it does not matter whether the Claimant was otherwise available for work for the remainder of her trip.

¹² See *Canada (Attorney General) v Elyoumni*, 2013 FCA 151.

¹³ This exception is found in section 55(5) of the EI Regulations.

[34] The General Division had no choice but to find the Claimant was disentitled to benefits from July 30, 2021, to October 7, 2021, having not been outside of Canada for an allowed reason for this period.

[35] This means the Claimant's arguments that the General Division erred in assessing her availability raise no arguable case. They have no chance of changing the outcome of the appeal.

It is not arguable the General Division made an error of jurisdiction

[36] There is no arguable case that the General Division made an error of jurisdiction.

[37] The Claimant says in her application to the Appeal Division that the General Division made an error of jurisdiction but does not explain what that error is.

[38] An error of jurisdiction can occur when the General Division doesn't decide something it should have decided, or if it decides something, it did not have the power to decide.

[39] The General Division needed to decide only one issue arising from the reconsideration decision. That issue was whether the Claimant met any of the exceptions from disentitlement for any of the period she was not in Canada.

[40] The General Division reached a decision on this issue, and it did not make a decision on any issues that were beyond its powers to decide.

[41] I have reviewed the entire written record and listened to the recording of the hearing. I am satisfied that the General Division did not misunderstand or ignore evidence that could have an impact on the outcome of this appeal.¹⁴

¹⁴ See *Karadeolian v Canada (Attorney General)*, 2016 FC 615, which recommends doing such a review.

Conclusion

[42] I am refusing permission to appeal. This means that the appeal will not proceed.

Charlotte McQuade
Member, Appeal Division