[TRANSLATION]

Citation: *FA v Canada Employment Insurance Commission*, 2022 SST 395

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	F. A.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated February 11, 2022 (GE-21-2458)

Tribunal member:	Jude Samson
Decision date:	May 18, 2022
File number:	AD-22-176

Decision

[1] I am refusing permission (leave) to appeal. The appeal won't proceed.

Overview

[2] F. A. is the Claimant in this case. The Canada Employment Insurance Commission (Commission) is asking him to pay back $8,500 in Employment Insurance (EI) benefits. Specifically, the Commission says that the Claimant isn't entitled to the benefits he received from December 14, 2020, because he was absent from Canada.

[3] The Claimant appealed the Commission's decision to the Tribunal's General Division, but it dismissed his appeal. The Claimant now wants to appeal the General Division decision to the Appeal Division. But before this case can proceed, I must first decide whether to give permission to appeal.

[4] I have reviewed the documents the Claimant submitted in support of his appeal carefully and several times. His submissions are repetitive and sometimes confusing. Overall, the Claimant seems to be arguing that the General Division ignored several pieces of evidence and misunderstood others.

[5] I have found that the Claimant's appeal has no reasonable chance of success. I have no choice, then, but to refuse permission to appeal. My reasons for deciding this are explained below.

Issue

[6] This decision focuses on the following issue: Could the General Division have ignored or misinterpreted evidence in way that could ground a successful appeal?

Analysis

[7] Appeal Division files follow a two-step process. This appeal is at step one: permission to appeal.

[8] The legal test that the Claimant needs to meet at this step is low: Has he raised an arguable case on which the appeal might succeed?[1] If the appeal has no reasonable chance of success, then I must refuse permission to appeal.[2]

The General Division decision isn't based on a relevant error of fact

[9] In general, a person is disqualified from receiving EI benefits for any period during which they are absent from Canada.[3] But the law recognizes certain exceptions to this general rule.[4]

[10] The Claimant was absent from Canada from December 12, 2020, to October 5, 2021. He cites his health as one of his reasons for leaving Canada, specifically high blood pressure, high cholesterol, obesity, diabetes, and other heart and respiratory problems.[5] It seems that these health problems resolved with significant weight loss.[6]

[11] The Claimant intended to return to Canada in January 2021. But several factors beyond his control delayed his return. Specifically, he got infected with COVID-19 in January 2021. After he recovered, his flights were cancelled or delayed several times because of the pandemic and the Canadian border closures.

[12] So, the General Division had to decide whether the Claimant was disqualified from receiving EI benefits because of his absence from Canada. Or, did his situation fall within an exception to the general rule?

---

[1] See *Osaj v Canada (Attorney General)*, 2016 FC 115; and *Ingram v Canada (Attorney General)*, 2017 FC 259.
[2] This is the legal test described in section 58(2) of the *Department of Employment and Social Development Act*.
[3] The general rule is set out in section 37(b) of the *Employment Insurance Act*.
[4] The exceptions are listed in section 55 of the *Employment Insurance Regulations*.
[5] See, for example, AD1C-2 and AD1C-16.
[6] See, for example, AD1C-17.

[13] On this point, the General Division identified only one exception that might apply to the Claimant's situation. Section 55(1)(a) of the *Employment Insurance Regulations* reads as follows:

> **55 (1)** Subject to section 18 of the Act, a claimant who is not a self-employed person is not disentitled from receiving benefits for the reason that the claimant is outside Canada
>
> > **(a) for the purpose of undergoing, at a hospital, medical clinic or similar facility** outside Canada, **medical treatment that is not readily or immediately available in the claimant's area of residence in Canada**, if the hospital, clinic or facility is accredited to provide the medical treatment by the appropriate governmental authority outside Canada;
>
> [emphasis added]

[14] However, the submissions before the Appeal Division don't seem to indicate that the General Division ignored or misinterpreted evidence concerning:

- treatment received in a medical facility outside Canada; or
- the unavailability of this treatment in the Claimant's area of residence.

[15] For example, the Claimant submitted several pieces of evidence showing medical tests he had undergone outside Canada, but what treatments did he receive in those medical centres? On the contrary, according to the Claimant, when new medical problems were discovered, he wanted to return to Canada quickly to get treatment.[7]

[16] Where is the evidence that the Claimant was treated in a medical centre outside Canada for his high blood pressure, high cholesterol, obesity, or diabetes? Where is the evidence that these treatments aren't readily or immediately available in his area of residence?

---

[7] See, for example, AD1C-10.

[17] Without a possible error related to these points, the Claimant's appeal has no reasonable chance of success. It is bound to fail.

[18] I recognize that the Claimant disputes several of the General Division's findings, especially about his availability for work. But these errors, if that is what they are, can't change the outcome of the case. In other words, even if I were to overturn the General Division's finding about the Claimant's availability for work, he would still be disqualified from receiving benefits because of the general rule that applies to persons who are absent from Canada.

[19] I also recognize that the Claimant's absence from Canada was extended for reasons entirely beyond his control. But the General Division found that it had no choice but to apply the law.[8] I see no error here.

[20] Applying the law can sometimes give rise to some harsh results that appear to be at odds with the objectives of the EI scheme. But the Tribunal can't rewrite or circumvent the law, even in sympathetic situations.[9]

[21] Aside from the Claimant's arguments, I have read the appeal file, listened to the audio recording of the General Division hearing, and examined the General Division decision.[10] But I haven't noted other reasons to give permission to appeal.

Conclusion

[22] I have concluded that the Claimant's appeal has no reasonable chance of success. I have no choice, then, but to refuse permission to appeal. This means that the appeal won't proceed.

Jude Samson
Member, Appeal Division

---

[8] See paragraphs 22 to 28 of the General Division decision.
[9] See *Canada (Attorney General) v Knee*, 2011 FCA 301 at paragraph 20 [*sic*].
[10] The Federal Court has said that I must do this in *Griffin v Canada (Attorney General)*, 2016 FC 874; and *Karadeolian v Canada (Attorney General)*, 2016 FC 615.