



[TRANSLATION]

Citation: *AB v Canada Employment Insurance Commission*, 2022 SST 419

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: A. B.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated February 10, 2022
(GE-21-2589)

Tribunal member: Jude Samson

Decision date: May 26, 2022

File number: AD-22-180

Decision

[1] Leave (permission) to appeal is refused. The appeal won't proceed.

Overview

[2] A. B. is the Claimant in this case. She applied for family caregiver benefits. A doctor had recommended she stay with her child who was only six years old and could not move on his own because of a fractured tibia. So, the Claimant had to take six weeks off work to care for her child and to homeschool him.

[3] The Canada Employment Insurance Commission refused the Claimant's application, saying that, according to the doctor, the child's life wasn't at risk.

[4] The Claimant appealed the Commission's decision to the Tribunal's General Division, but it dismissed her appeal. The Claimant now wants to appeal the General Division decision to the Appeal Division. Before the case can move forward, I have to first decide whether to give permission to appeal.

[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.

Issue

[6] The Claimant's notice of appeal raises a single issue: Could the General Division have based its decision on an important factual error by finding that the Claimant wasn't entitled to family caregiver benefits?

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 she 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 Claimant hasn't raised an error based on which the appeal might succeed

[9] To be entitled to family caregiver benefits, a person has to be a family member of a "critically ill child."³ The term is defined as follows:⁴

[C]ritically ill child means a person who is under 18 years of age on the day on which the period referred to in subsection 23.2(3) or 152.061(3) of the Act begins, whose baseline state of health has significantly changed and whose life is at risk as a result of an illness or injury.

[Underlining by the undersigned]

[10] The General Division acknowledged that the Claimant's child needed care at home. However, it found that the child's life wasn't at risk.⁵ So, the Claimant wasn't entitled to family caregiver benefits.⁶

[11] In her notice of appeal, the Claimant just repeats the same arguments that were already considered by the General Division. Specifically, her child was critically ill in the sense that he could not stay home alone. Also, there was a significant change in his health.

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 See section 23.2 of the *Employment Insurance Act*.

⁴ See section 1(6) of the *Employment Insurance Regulations*.

⁵ See the medical certificates at pages GD3-16 and GD3-19 of the appeal record.

⁶ See the General Division decision at paragraphs 15-21.

[12] However, the Claimant didn't address the General Division's conclusion that her child's injury never put his life at risk. As a result, the Claimant doesn't meet the requirements under the law to be entitled to family caregiver benefits.⁷

[13] So, I find that the Claimant's appeal has no reasonable chance of success. It is bound to fail.

[14] Regardless of this finding, I can't just look at the specific ground of appeal that the Claimant has raised.⁸ So, I have reviewed the documents on file and the decision under appeal. But I haven't noted other reasons to give permission to appeal.

Conclusion

[15] I find 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

⁷ See, for example, *PS v Canada Employment Insurance Commission*, 2014 SSTGDEI 19.

⁸ 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.