



Citation: *MS v Canada Employment Insurance Commission*, 2022 SST 500

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: M. S.
Representative: S. G.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated April 19, 2022
(GE-22-681)

Tribunal member: Jude Samson

Decision date: June 6, 2022
File number: AD-22-264

Decision

[1] Leave (permission) to appeal is refused. The appeal will not proceed.

Overview

[2] The Claimant, M. S., established a benefit period running from October 4, 2020, to October 2, 2021. As part of his benefit period, the Claimant could collect up to 50 weeks of Employment Insurance (EI) regular benefits. In fact, he collected EI regular benefits for many weeks, and then left Canada from December 2020 until October 2021.

[3] The Claimant filed a new application for EI regular benefits in November 2021. The Canada Employment Insurance Commission (Commission) refused to pay him benefits saying that he didn't have enough hours to establish a second benefit period.

[4] Instead, the Claimant asked the Commission to extend his first benefit period. He argued that a Government of Canada travel ban delayed his return to the country. However, the Commission decided that the Claimant didn't meet the requirements for extending his first benefit period.

[5] The Claimant appealed the Commission's decision to the Tribunal's General Division but it dismissed his appeal. He now wants to appeal the General Division decision to the Tribunal's Appeal Division but he needs permission for his appeal to move forward.

[6] I too sympathize with the Claimant's circumstances. However, I've found that his appeal has no reasonable chance of success. I have no choice, then, but to refuse permission to appeal.

Issue

[7] This decision focuses on one issue: Could the General Division have made an error by failing to extend the Claimant's benefit period because of the time that he was stuck overseas?

Analysis

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

[9] The legal test that the Claimant needs to meet at this step is low: Is there any arguable ground on which the appeal might succeed?¹ If the appeal has no reasonable chance of success, then I must refuse permission to appeal.²

[10] To decide this question, I focused on whether the General Division could have made a relevant error.³

The appeal has no reasonable chance of success

[11] Unfortunately for the Claimant, his arguments are bound to fail.

[12] The law says that benefit periods last 52 weeks.⁴ However, the law also includes a short list of circumstances in which benefit periods can be extended.⁵ The General Division considered the Claimant's arguments, but concluded that being stuck overseas is not among the circumstances that allows for a benefit period to be extended.

[13] The Claimant's Application to the Appeal Division essentially repeats arguments he made at the General Division level. The Claimant argues that the General Division overlooked the fairness of the situation, because he was stuck outside Canada for reasons beyond his control.

¹ This legal test is described in cases like *Osaj v Canada (Attorney General)*, 2016 FC 115 at paragraph 12 and *Ingram v Canada (Attorney General)*, 2017 FC 259 at paragraph 16.

² This is the legal test described in section 58(2) of the *Department of Employment and Social Development Act*.

³ The relevant errors, formally known as "grounds of appeal," are listed under section 58(1) of the *Department of Employment and Social Development Act*.

⁴ See section 10(2) of the *Employment Insurance Act*.

⁵ See sections 10(10) to 10(15) of the *Employment Insurance Act*.

[14] The General Division considered this argument but rejected it. The General Division concluded that the Tribunal must base its decisions on the law, and not on sympathy, fairness, or compassion.⁶

[15] The Claimant has not pointed to a specific error in this part of the General Division decision.⁷ Similarly, he has not highlighted a part of the law that might allow a benefit period extension in his circumstances.

[16] As a result, his arguments have no reasonable chance of success.

[17] Beyond the Claimant's arguments, I also reviewed the file and examined the General Division decision.⁸ The General Division summarized the law and used evidence to support its decision. I didn't find other reasons for giving the Claimant permission to appeal.

Conclusion

[18] 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

⁶ See paragraphs 17 to 18 of the General Division decision.

⁷ Rather, it is supported by decisions like *Canada (Attorney General) v Knee*, 2011 FCA 301, and *Nadji v Canada (Attorney General)*, 2016 FC 885 at paragraph 13.

⁸ The Federal Court has said that I must do this in decisions like *Griffin v Canada (Attorney General)*, 2016 FC 874 and *Karadeolian v Canada (Attorney General)*, 2016 FC 615.