



Citation: *MS v Canada Employment Insurance Commission*, 2022 SST 512

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

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

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated April 7, 2022
(GE-22-532)

Tribunal member: Pierre Lafontaine

Decision date: June 15, 2022
File number: AD-22-307

Decision

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

Overview

[2] The Applicant (Claimant) took an extended medical leave of absence starting on February 28, 2021, in order to travel to India for in vitro fertilization (IVF) treatment. On September 14, 2021, while she was in India, she applied for sickness benefits because she became ill and could not return to Canada. The Commission imposed a disentitlement on her claim because she was not in Canada and did not prove she would be available for work if she were not sick.

[3] The Claimant requested that the Commission reconsider its decision. She explained that she went to India to undergo IVF treatment because it was cheaper to have it there than in Vancouver. She also submitted e-mails that showed she maintained contact with her employer while she was in India and fully intended to return to her job as soon as she was able.

[4] The General Division found that the Claimant did not demonstrate that she travelled to India for the purpose of receiving medical treatment that was not readily or immediately available in Canada. It found that the Claimant did not meet any of the exceptions to the general rule against receiving EI benefits while outside of Canada. The General Division concluded that the Claimant could not be paid sickness benefits from September 14, 2021 to January 9, 2022, because she was outside of Canada during this time.

[5] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. She submits that she knew the outcome of her appeal before the General Division five minutes into the hearing. She submits that she simply could not return to Canada because she fell ill. She puts forward that she is not sure if changing her name would have helped her appeal.

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

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

Issue

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

Analysis

[9] 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.

[10] 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 her 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.

[11] 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?

[12] In support of her application for leave to appeal, the Claimant submits that she knew the outcome of her appeal before the General Division five minutes into the hearing. She submits that she simply could not return to Canada because she fell ill. She puts forward that she is not sure if changing her name would have helped her appeal.

[13] There is no dispute that the Claimant was not in Canada from September 14, 2021 to January 9, 2022.

[14] 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

[15] One of the exceptions is when a claimant is absent of Canada 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 a claimant's area of residence in Canada.³

[16] As stated by the General Division, to meet the medical treatment exception, the Claimant had to prove that she traveled to India for the purposes of medical treatment that was not readily or immediately available in Canada.

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

² Section 55 of the *Employment Insurance Regulations*.

³ Section 55(1) (a) of the *Employment Insurance Regulations*.

[17] Before the General Division, the Claimant conceded that IVF treatment is readily and immediately available in Canada.

[18] The General Division found that IVF treatment is readily and immediately available in Vancouver, which is the Claimant's area of residence in Canada.

[19] The evidence shows that the Claimant made a personal decision to go to India because she wanted to receive medical treatment at a reasonable cost that offered a greater chance of success. This does not mean that the treatment was not "immediately available" in the Claimant's area of residence in Canada.

[20] Because the Claimant does not meet any exceptions mentioned in the law, she is not eligible to receive benefits for the period during which she was not in Canada. This was sufficient to dispose of the Claimant's appeal without deciding on her availability to work.

[21] I must reiterate that neither the General Division nor the Appeal Division has the power to deviate from the rules established by Parliament for the granting of benefits, even for compassionate reasons.

[22] After reviewing the appeal docket and the General Division's decision as well as considering the Claimant's arguments in support of her 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