



[TRANSLATION]

Citation: *ML v Canada Employment Insurance Commission*, 2022 SST 1346

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: M. L.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated
October 21, 2022 (GE-22-2560)

Tribunal member: Pierre Lafontaine

Decision date: November 23, 2022

File number: AD-22-800

Decision

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

Overview

[2] The Applicant (Appellant) was a manager in an Ontario university for many years. During his years of employment, he regularly worked from his second home, in Florida.

[3] In April 2021, the Claimant was laid off. He made a claim for Employment Insurance (EI) benefits, and it was approved. He then diligently completed his weekly reports.

[4] In December 2021, he indicated in his report that he was outside Canada, specifically in Florida. The system did not let him continue. He talked to a Commission agent, who told him that claimants are not entitled to benefits when they are outside Canada. But this agent also told him that his case might be different because he often worked from his second home and that a follow-up would be done.

[5] It was not until April 2022, after he had called the Commission back many times, that a Commission agent confirmed to him that no exception could be applied to him. He then immediately came back to Canada.

[6] The Respondent (Commission) disentitled the Claimant from benefits while he was outside Canada from December 6, 2021, to April 18, 2022. The Claimant requested a reconsideration of that decision, but the Commission upheld its initial decision. He appealed the reconsideration decision to the General Division.

[7] The General Division found that the Claimant is disentitled from receiving benefits because he did not meet any of the exceptions to the rule that a claimant is not entitled to benefits when they are outside of Canada.

[8] The Claimant is now asking for leave to appeal the General Division decision to the Appeal Division. He argues that he has always been sincere and honest with the

Commission. He was waiting to hear back from an agent who told him that an exception might apply. He only got a definitive answer in April 2022 that no exception applied in his case.

[9] I have to decide whether there is an arguable case that the General Division made a reviewable error based on which the appeal has a reasonable chance of success.

[10] I am refusing leave to appeal because the Claimant has not raised a ground of appeal based on which the appeal has a reasonable chance of success.

Issue

[11] Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

Analysis

[12] 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 the following:

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.

[13] 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 has to be met at the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove his case. Instead, he has to establish that the appeal

has a reasonable chance of success. In other words, that there is arguably a reviewable error based on which the appeal might succeed.

[14] I will grant leave to appeal if I am satisfied that at least one of the Claimant's stated grounds of appeal gives the appeal a reasonable chance of success.

Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

[15] The Claimant argues that he has always been sincere and honest with the Commission. He was waiting to hear back from an agent who told him that an exception might apply. He only got a definitive answer in April 2022 that no exception applied in his case. He would have come back to Canada a lot sooner if someone had clearly told him that staying in his second home would result in him being denied benefits.

[16] The uncontested evidence before the General Division shows that the Claimant was outside Canada from December 6, 2021, to April 18, 2022.

[17] The law says without ambiguity that a claimant is not entitled to receive benefits for any period during which they are outside Canada, unless they fall under one of the exceptions set out in the *Employment Insurance Regulations* (Regulations).¹

[18] The General Division found that the Claimant was not outside Canada for any of the reasons listed as an exception to the rule. It found that the Claimant could not get benefits from December 6, 2021, to April 18, 2022.

[19] The Tribunal cannot decide that the Claimant is entitled to benefits under the law simply because the Commission failed to properly inform him about his obligations, however regrettable that failure may be. As the General Division pointed out, the Tribunal does not have the power to change directly or indirectly the provisions and terms of the law.

¹ See section 37(b) of the *Employment Insurance Act* and section 55 of the *Employment Insurance Regulations*.

[20] I can only conclude that the Claimant has not raised any issue of law, fact, or jurisdiction that may lead to the setting aside of the decision under review.

[21] After reviewing the appeal file, the decision of the General Division, and the arguments in support of the request for leave to appeal, I have no choice but to find that the appeal has no reasonable chance of success.

Conclusion

[22] Leave to appeal is refused. The appeal will not proceed.

Pierre Lafontaine
Member, Appeal Division