



Citation: *TS v Canada Employment Insurance Commission*, 2022 SST 1269

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: T. S.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated October 17, 2022
(GE-22-2261)

Tribunal member: Jude Samson

Decision date: November 28, 2022

File number: AD-22-791

Decision

[1] T. S. is the Claimant in this case. I'm refusing her request for leave (permission) to appeal. Her appeal will not proceed.

Overview

[2] The Claimant went to Florida on vacation in December 2021. However, she had to extend her trip when her and her husband were infected with COVID-19. When she got back to Canada, the Claimant applied for Employment Insurance (EI) sickness benefits.

[3] The Canada Employment Insurance Commission (Commission) decided that the Claimant wasn't entitled to benefits while she was outside Canada.

[4] The Claimant appealed the Commission's decision to the Tribunal's General Division and lost. The Claimant now wants to appeal the General Division decision to the Tribunal's Appeal Division. However, she needs permission for her file to move forward.

[5] 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 is arguing one issue: Could the General Division have made a relevant error by concluding that the Claimant's couldn't rely on an exception to the general rule that people can't be paid EI benefits while outside of Canada?¹

¹ Section 37(b) of the *Employment Insurance Act* establishes the general rule about receiving benefits while outside Canada. Section 55 of the *Employment Insurance Regulations* provides a list of exceptions to the rule.

Analysis

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

[8] The legal test the Claimant needs to meet at this step is low: Is there any arguable ground on which the appeal might succeed?² If the appeal has no reasonable chance of success, then I must refuse permission to appeal.³

[9] To decide this question, I focused on whether the General Division could have made one of the errors that the law says I can consider.⁴

The Claimant's appeal has no reasonable chance of success

[10] The Claimant argues that the General Division made an error by failing to recognize that she was residing temporarily in the United States. According to the Claimant, this puts her within an exception to the rule against receiving benefits while outside of Canada.⁵

[11] The exception that the Claimant is relying on cannot help her. Regardless of whether the Claimant was temporarily residing in Canada, the exception only applies to people who are in an American state that is contiguous to Canada. In other words, a state that shares a border with Canada.

[12] Instead, the Claimant was in Florida. Florida is not contiguous to Canada, so the exception cannot apply in her case.

[13] As a result, I've concluded that the Claimant's appeal has no reasonable chance of success.

² 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.

³ This is the legal test described in section 58(2) of the *Department of Employment and Social Development Act* (DESD Act).

⁴ Section 58(1) of the DESD Act lists the relevant errors, formally known as "grounds of appeal."

⁵ The Claimant relies specifically on section 55(6) of the *Employment Insurance Regulations*.

[14] Aside from the Claimant's arguments, I also reviewed the file and examined the General Division decision.⁶ The General Division summarized the law and used evidence to support its decision. I didn't find evidence supporting the Claimant's appeal that the General Division might have ignored or misinterpreted.

Conclusion

[15] I've 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 will not proceed.

Jude Samson
Member, Appeal Division

⁶ 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.