



[TRANSLATION]

Citation: *LB v Canada Employment Insurance Commission*, 2023 SST 946

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

**Applicant:** L. B.  
**Representative:** B. N.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated  
May 15, 2023 (GE-23-752)

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**Tribunal member:** Pierre Lafontaine  
**Decision date:** July 21, 2023  
**File number:** AD-23-610

## Decision

[1] Permission to appeal is refused. The appeal will not proceed.

## Overview

[2] The Applicant (Claimant) applied for the family caregiver benefit for adults to be able to care for her partner who had two consecutive accidents.

[3] The Respondent (Commission) denied the Claimant benefits because the medical certificate in support of her application did not mention that her partner's life was at risk due to illness or injury. The Claimant asked the Commission to reconsider this decision, but it upheld its initial decision. The Claimant appealed the reconsideration decision to the Tribunal's General Division.

[4] The General Division found that the Claimant's medical certificate did not meet the criteria set out in the *Employment Insurance Act* (EI Act) and the *Employment Insurance Regulations* (EI Regulations), so the Claimant was not eligible for the family caregiver benefit for adults.

[5] The Claimant now seeks permission from the Appeal Division to appeal the General Division decision. The Claimant argues that the benefit for critically ill adults does not require that the person's life be at risk. She argues that a distinction should be made between the critically ill benefit and compassionate care benefits. The Claimant asks that financial assistance be granted based on the information provided by the Government of Canada.

[6] I must 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.

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

## Issue

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

## 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 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.

[10] An application for permission 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 permission to appeal stage, the Claimant does not have to prove her case but must establish that her appeal has a reasonable chance of success. In other words, that there is arguably some reviewable error upon which the appeal might succeed.

[11] I will grant permission 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?**

[12] The Claimant argues that the benefit for critically ill adults does not require that the person's life be at risk. She argues that a distinction should be made between the critically ill benefit and compassionate care benefits. The Claimant asks that financial

assistance be granted based on the information provided by the Government of Canada.

[13] The EI Act says that the family caregiver benefit for adults is payable to the family member of a “critically ill adult” who presents a medical certificate certifying this fact.<sup>1</sup> The EI Regulations define what constitutes a critically ill adult. To meet this definition, the patient’s life must be at risk because of an illness or injury.<sup>2</sup>

[14] As the General Division decided, the medical certificate submitted by the Claimant does not meet this criterion, since it does not state that her partner’s life is at risk because of an illness or injury.

[15] The Claimant argues that the Government of Canada’s website says that the benefits are available to provide care or support to a critically ill or injured person **or** to someone who needs end-of-life care.<sup>3</sup>

[16] As the General Division noted, the website also mentions under the same heading that, “[a] critically ill or injured person is someone whose baseline state of health has changed significantly because of illness or injury. As a result, **their life is at risk** and they need the care or support of at least 1 caregiver.”<sup>4</sup>

[17] Unfortunately for the Claimant, the federal courts have established that the requirements of the EI Act do not allow any discrepancy and do not give the Tribunal any discretion in its application.<sup>5</sup> Any change has to come from Parliament.

[18] I find that the Claimant has not raised any question of law, fact, or jurisdiction that could justify setting aside the decision under review.

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<sup>1</sup> Section 23.3(1) of the *Employment Insurance Act*.

<sup>2</sup> Section 1(7) of the *Employment Insurance Regulations*.

<sup>3</sup> See GD2-31.

<sup>4</sup> See GD2-33.

<sup>5</sup> *Canada (Attorney General) v Levesque*, 2001 FCA 304; *Pannu v Canada (Attorney General)*, 2004 FCA 90.

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

## **Conclusion**

[20] Permission to appeal is refused. The appeal will not proceed.

Pierre Lafontaine  
Member, Appeal Division