



Citation: *AA v Canada Employment Insurance Commission*, 2023 SST 894

**Social Security Tribunal of Canada  
Appeal Division**

**Leave to Appeal Decision**

**Applicant:** A. A.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated March 28, 2023  
(GE-23-473)

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**Tribunal member:** Pierre Lafontaine

**Decision date:** July 11, 2023

**File number:** AD-23-388

## Decision

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

## Overview

[2] The Applicant (Claimant) was an aesthetician. She was laid off work in March 2020 because of the Covid-19 pandemic. She applied for benefits. She received EI Emergency Response Benefits until September 27, 2020. Then, she was automatically converted to EI regular benefits (regular benefits). The Claimant received regular benefits until August 14, 2021.

[3] The Canada Employment Insurance Commission (Commission) began looking at her availability for work during the period she had received those benefits. It decided she had not been available for work during the benefit period. Because of this, it said she was disentitled to (in other words, not allowed to get) the benefits she had been paid. A notice of debt was issued to the Claimant saying that she had to repay \$23,000. This represents the 46 weeks of regular benefits she was paid between September 27, 2020, and August 14, 2021. After an unsuccessful reconsideration, the Claimant appealed to the General Division.

[4] The General Division concluded that the Claimant was not capable of working during any of the 46 weeks she received regular benefits because she was too ill. However, it concluded that the Claimant was entitled to receive 15 weeks of sickness benefits.

[5] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. She submits that she wants a write-off of her debt.

[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?

## Preliminary matters

[9] It is well established that the Appeal Division must consider the evidence presented to the General Division to decide the present leave to appeal application.<sup>1</sup>

## Analysis

[10] 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:

- a) the General Division: failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- c) the General Division based its decision on an erroneous finding of fact that it had made in a perverse or capricious manner or without regard for the material before it.

[11] An application for leave to appeal is a preliminary step to a hearing on the merits. The Claimant must meet this initial hurdle, but it is lower than the one of the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to

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<sup>1</sup> *Sibbald v Canada (Attorney General)*, 2022 FCA 157.

prove her case but must establish that the appeal has a reasonable chance of success based on a reviewable error.

[12] In other words, 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 in appeal, in order to grant leave.

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

[13] The Claimant submits that she wants a write-off of her debt.

[14] To be eligible to receive benefits, claimants must prove that they are **capable of** and available for work—on any given work day—and are unable to find suitable employment.<sup>2</sup>

[15] From the evidence, the General Division concluded that the Claimant was not capable of working during the benefit period because she was too ill. However, it concluded that the Claimant was entitled to receive 15 weeks of sickness benefits.

[16] As explained by the General Division, the Tribunal does not have the authority to write-off a debt. Only the Commission has the power to do that. Once a decision is rendered by the Commission, the Federal Court of Canada has exclusive jurisdiction to hear an appeal on this type of issue.

[17] For the above-mentioned reasons and after reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Claimant in support of her request for leave to appeal, I find that the appeal has no reasonable chance of success.

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<sup>2</sup> Section 18(1)(a) of the *Employment Insurance Act*.

## **Conclusion**

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

Pierre Lafontaine  
Member, Appeal Division