



Citation: *MN v Canada Employment Insurance Commission*, 2023 SST 987

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: M. N.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated March 23, 2023
(GE-22-3745)

Tribunal member: Candace R. Salmon

Decision date: July 26, 2023

File number: AD-23-347

Decision

[1] I am refusing leave (permission) to appeal because the Claimant doesn't have an arguable case. The appeal will not proceed.

Overview

[2] M. N. is the Claimant. He applied for Employment Insurance (EI) regular benefits. The Canada Employment Insurance Commission (Commission) decided he was disentitled from receiving benefits between January 25, 2019, and March 20, 2019, because he was outside of Canada.

[3] The Tribunal's General Division dismissed the appeal because it found the decision to disentitle the Claimant from EI benefits between January 25, 2019, and March 20, 2019, was correct.

[4] The Claimant wants to appeal the General Division decision to the Appeal Division. He needs permission for the appeal to move forward.

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

Preliminary matters

[6] The Claimant appealed to the Appeal Division on April 9, 2023. On April 25, 2023, the Tribunal sent him a letter. The Tribunal noted that the Claimant used the incorrect form when applying to the Appeal Division, so he did not have the option to select reasons for his appeal. The Tribunal asked the Claimant to provide details about why he was appealing, and which type of error he believed the General Division made.¹ The deadline to provide further information was May 15, 2023.

[7] The Claimant replied on May 15, 2023. He said that he now knows that he wasn't entitled to EI benefits while outside of Canada but didn't know at the time he claimed the

¹ See SST letter to the Claimant, dated April 25, 2023.

benefits. He added that he was in an emergency situation. He asks the Tribunal for forgiveness, because his “economic situation is very bad.”²

Issue

[8] Is there an arguable case that the General Division made a reviewable error in this case?

Analysis

The test for getting permission to appeal

[9] An appeal can only proceed if the Appeal Division gives permission to appeal.³ I must be satisfied that the appeal has a reasonable chance of success.⁴ This means that there must be some arguable ground upon which the appeal might succeed.⁵

[10] To meet this legal test, the Claimant must establish that the General Division may have made an error recognized by the law.⁶ If the Claimant’s arguments do not deal with one of these specific errors, the appeal has no reasonable chance of success, and I must refuse permission to appeal.⁷

The Claimant did not identify any errors in the General Division decision

[11] On the application to the Appeal Division, the Claimant completed the incorrect form. The form he used didn’t have options asking him which error he believed the General Division made. However, the Tribunal asked him to provide his reasons. He replied with an email stating he recognized he wasn’t entitled to additional benefits while

² See AD1A-1.

³ The *Department of Employment and Social Development Act* (DESD Act) at section 58(1) says that I must refuse leave to appeal if I find the “appeal has no reasonable chance of success.” This means that I must refuse permission for the appeal to move forward if I find there isn’t an arguable case (*Fancy v Canada (Attorney General)*, 2010 FCA 63 at paragraphs 2 and 3). See also section 56(1) of the DESD Act.

⁴ See section 58(2) of the DESD Act.

⁵ See, for example, *Osaj v Canada (Attorney General)*, 2016 FC 115.

⁶ The relevant errors, formally known as “grounds of appeal,” are listed under section 58(1) of the DESD Act. These errors are also explained on the Notice of Appeal to the Appeal Division and were listed on the Tribunal’s April 25, 2023, letter to the Claimant.

⁷ This is the legal test described in section 58(2) of the DESD Act.

outside of Canada, but asked for forgiveness because he had not understood that he wasn't entitled at the time he applied for benefits.

There are no reasons for giving the Claimant permission to appeal

[12] Despite the absence of submissions in relation to potential errors in the General Division's decision, I reviewed the entire file to make sure the General Division didn't make a mistake.

[13] I reviewed the documents in the file, examined the decision under appeal, and satisfied myself that the General Division did not misinterpret or fail to properly consider any relevant evidence.⁸

[14] The Tribunal must follow the law, including the *Department of Employment and Social Development Act*. It provides rules for appeals to the Appeal Division. The Appeal Division does not provide an opportunity for the parties to re-argue their case. It determines whether the General Division made an error under the law.

[15] There is no arguable case that the General Division made a reviewable error in this case.

[16] I recognize that the Claimant made a mistake. I understand that he was in an emergency and thought he could use the EI program for support while out of the country. Unfortunately, the law doesn't allow any discretion or flexibility for the Tribunal to write-off or forgive an overpayment, even for humanitarian reasons.⁹

⁸ See *Karadeolian v Canada (Attorney General)*, 2016 FC 165 at paragraph 10.

⁹ The discretion to write-off an overpayment is solely within the Commission's power: See *Canada (Attorney General) v Villeneuve*, 2005 FCA 440 at paragraph 16.

Conclusion

[17] This appeal has no reasonable chance of success. For that reason, I'm refusing permission to appeal.

[18] This means that the appeal will not proceed.

Candace R. Salmon
Member, Appeal Division