



Citation: *DM v Canada Employment Insurance Commission*, 2023 SST 1059

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant:	D. M.
Respondent:	Canada Employment Insurance Commission
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Decision under appeal:	General Division decision dated June 5, 2023 (GE-23-303)
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Tribunal member:	Candace R. Salmon
Decision date:	August 9, 2023
File number:	AD-23-597

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] D. M. is the Claimant. She established a claim for Employment Insurance (EI) regular benefits.

[3] While receiving EI benefits, the Claimant took a trip to Alaska with her mother. She did not report the trip to the Canada Employment Insurance Commission (Commission).

[4] The Commission learned that she was outside Canada while receiving benefits and asked her why she didn't report that she wasn't in Canada. She provided a number of reasons, including that it was a last-minute trip she took to spend time with her mother, who was very ill.

[5] The Commission decided the Claimant wasn't entitled to EI benefits from July 15, 2019, until July 29, 2019, and that she wasn't available for work for the same dates. It also found that she knowingly made false statements to the Commission and issued a warning letter.¹

[6] The Claimant appealed to the Tribunal's General Division. The General Division dismissed the appeal. It agreed with the Commission's findings. However, it ended the disentitlement as of July 28, 2019, because the Claimant returned to Canada on July 29, 2019.²

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

¹ See initial Commission decision at GD3-37.

² See General Division decision at paragraph 2.

[8] I am refusing permission to appeal because the appeal has no reasonable chance of success.

Issues

[9] Is there an arguable case that the General Division made an error of jurisdiction?

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

Analysis

The test for getting permission to appeal

[11] 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

[12] 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

There is no arguable case that the General Division made an error of jurisdiction

[13] The Claimant said that the General Division made an error of jurisdiction. She says it made an "important oversight" because she stated multiple times that her regular

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.

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

benefits should have been changed to compassionate care benefits.⁸ She says this would have solved the issues and she wouldn't be penalized.

[14] The General Division considered this submission. It found that it didn't have jurisdiction to consider compassionate care benefits because the Claimant didn't apply for those benefits. This meant the Commission didn't make a reconsideration decision about a possible entitlement to this type of benefit. The General Division says that since the Commission's reconsideration decision was based on the Claimant's eligibility for regular benefits, it had no authority to make a decision about compassionate care benefits.

[15] The *Department of Employment and Social Development Act* (DESD Act) says that any decision of the General Division may be appealed to the Appeal Division.⁹ The General Division has jurisdiction to review almost all reconsideration decisions from the Commission.¹⁰ However, there must be a reconsideration decision for the General Division to have the authority to hear an appeal.

[16] The Commission did not identify compassionate care benefits as a reconsideration issue, though it's clear in the file that it did consider the Claimant's submission about compassionate care.¹¹ It didn't reconsider the Claimant's benefit type because she only applied for regular benefits. There are cases that suggest the Tribunal should take a broad approach to its jurisdiction, within the limits of the law, to manage appeals fairly and efficiently and to consider the underlying requests and decisions to determine the scope of the reconsideration.¹² However, this is a case where the Claimant didn't apply for the type of benefit, she now seeks to claim. The General

⁸ See AD1B-2.

⁹ See DESD Act, section 55.

¹⁰ See *Employment Insurance Act*, sections 112 and 113.

¹¹ See GD3-43 and GD3-44. A Commission officer spoke to the Claimant about compassionate care benefits, saying the Claimant would have to apply for that type of benefit and explained which medical form was required. It also stated that if she provided the required document, it would be reviewed as new information.

¹² See *Fu v Canada (Attorney General)*, 2019 FC 527; *ML v Minister of Employment and Social Development*, 2020 SST 281 at paragraph 17; and *MS v Canada Employment Insurance Commission*, 2022 SST 933.

Division recognized that and decided it didn't have jurisdiction to decide whether she could have been entitled to compassionate care benefits.

[17] There is no arguable case that the General Division made a jurisdictional error because its findings are supported by the law.

There are no reasons to give the Claimant permission to appeal

[18] I reviewed the entire file to make sure the General Division didn't make a mistake. 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.¹³

[19] The Tribunal must follow the law, including the DESA 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.

[20] I acknowledge that the Claimant disagrees with the General Division's decision, but that is not enough for me to intervene. I cannot reweigh the evidence to potentially come to a conclusion more favourable for the Claimant.¹⁴

Conclusion

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

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

Candace R. Salmon
Member, Appeal Division

¹³ See *Karadeolian v Canada (Attorney General)*, 2016 FC 165 at paragraph 10.

¹⁴ See *Garvey v Canada (Attorney General)*, 2018 FCA 118.