



Citation: *DL v Canada Employment Insurance Commission*, 2023 SST 1188

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

# **Leave to Appeal Decision**

**Applicant:** D. L.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated June 28, 2023  
(GE-22-4044)

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**Tribunal member:** Pierre Lafontaine

**Decision date:** August 31, 2023

**File number:** AD-23-698

## Decision

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

## Overview

[2] The Applicant (Claimant) lost his job on June 30, 2018. He applied for regular EI benefits which began on August 5, 2018. He travelled outside of Canada in January 2019 and again in March 2019.

[3] The Canada Employment Insurance Commission (Commission) decided that the Claimant was disentitled from receiving EI regular benefits from January 25, 2019, to January 29, 2019, and from March 25, 2019, to March 29, 2019, because he was outside of Canada on those dates. It also concluded that he wasn't available for work. After an unsuccessful reconsideration, the Claimant appealed to the General Division.

[4] The General Division found that the Claimant's reasons for being outside Canada do not come within any of the exceptions listed in section 55(1) of the *Employment Insurance Regulations* (EI Regulations). It concluded that the Claimant was not entitled to receive benefits for his time outside Canada. It also concluded that the Claimant was available to work while outside Canada.

[5] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. The Claimant submits that in this digital age of instant communication, a requirement to be physically present in Canada is unreasonable and unfair when his trip was made on compassionate grounds.

[6] I must decide whether the Claimant raised some reviewable error of the General Division upon which the appeal might succeed.

[7] I refuse 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?

## 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 that:

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 leave 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 leave to appeal stage, the Claimant does not have to prove his case but must establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, that there is arguably some reviewable error upon which the appeal might succeed.

[11] Therefore, before I can grant leave, 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.

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

[12] The Claimant submits that in this digital age of instant communication, a requirement to be physically present in Canada is unreasonable and unfair when his trip was made on compassionate grounds.

[13] At the hearing, the Claimant explained that he did indeed travel to the United States to visit a friend who was terminally ill from January 24, 2019, to January 30, 2019. He also said he travelled to the Dominican Republic for a vacation from March 23, 2019, to March 30, 2019.

[14] The undisputed evidence shows that the Claimant was outside Canada on those dates. As stated by the General Division, even though the Claimant was available for work, he is subject to a disentitlement under section 37(b) of the *Employment Insurance Act* (EI Act) because the reasons for his absences from Canada met none of the prescribed exceptions mentioned in section 55(1) of the EI regulations.

[15] Unfortunately, for the Claimant, the Tribunal does not have the discretion to allow him to receive EI benefits while outside Canada. It cannot change the law. Only Parliament can amend the EI Act and its regulations.

[16] After reviewing the appeal file and the General Division's decision as well as considering the Claimant's arguments in support of his request for leave to appeal, I have no choice but to find that the appeal has no reasonable chance of success. The Claimant has not set out a reason, which falls into the above-enumerated grounds of appeal that could possibly lead to the reversal of the disputed decision.

## **Conclusion**

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

Pierre Lafontaine  
Member, Appeal Division