



Citation: *LA v Canada Employment Insurance Commission*, 2023 SST 1269

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

# **Leave to Appeal Decision**

**Applicant:** L. A.

**Respondent:** Canada Employment Insurance Commission

---

**Decision under appeal:** General Division decision dated June 23, 2023  
(GE-23-901)

---

**Tribunal member:** Pierre Lafontaine

**Decision date:** September 14, 2023

**File number:** AD-23-722

## Decision

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

## Overview

[2] The Applicant (Claimant) applied for special benefits to be able to care for her son. The Respondent (Commission) denied the Claimant benefits because the medical certificate filed in support of her application did not mention that her son's life was at risk because of an illness or injury. The Claimant requested a reconsideration of that decision, but the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the Tribunal's General Division.

[3] The General Division determined that the medical certificate and the doctor's letter the Claimant presented did not meet the criteria under the *Employment Insurance Act* (EI Act) and *Employment Insurance Regulations* (EI Regulations) and that the Claimant was therefore not eligible to receive family caregiver benefits.

[4] The Claimant now seeks leave to appeal the General Division decision. She disagrees with the General Division decision. She submits that the General Division made an important error of fact when it did not consider that her son's life was at risk following his hospitalization and diagnosis. The Claimant submits that she provided a letter from the doctor that proves how serious the illness is, and how his life was at risk. She submits that she should qualify for caregiver benefits.

[5] 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.

[6] I refuse leave to appeal because the Claimant has not raised a ground of appeal based on which the appeal has a reasonable chance of success.

## Issue

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

## Analysis

[8] 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.

[9] 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 her 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.

[10] Therefore, before I can grant leave, I must 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?**

[11] The Claimant submits that the General Division made an important error of fact when it did not consider that her son's life was at risk following his hospitalization and diagnosis. The Claimant submits that she provided a letter from the doctor that proves how serious her son's illness is, and how his life was at risk. She submits that she should qualify for caregiver benefits.

[12] I note that the Appeal Division has already ruled on this issue on several occasions.<sup>1</sup>

[13] The EI Act provides that family caregiver benefits are payable to a family member of a "critically ill child" who presents a medical certificate supporting this fact.<sup>2</sup> It is an essential requirement to receive this type of benefit.

[14] The EI Regulations clearly define what constitutes a critically ill child. To meet this definition, the patient's life must be at risk because of an illness or injury.<sup>3</sup>

[15] It is true that the evidence before the General Division demonstrates that the Claimant's son needed her assistance. However, as the General Division decided, the medical certificate the Claimant presented does not meet the requirements of the EI Act and EI Regulations since it shows that the patient's life is not at risk because of an illness or injury.<sup>4</sup> The doctor's letter does not contradict the medical certificate.<sup>5</sup>

[16] The Federal Court of Appeal has established that the requirements of the EI Act do not allow discrepancy and do not give the Tribunal discretion in its application.<sup>6</sup>

[17] I understand the Claimant's position when she argues that the eligibility criteria are inconsistent with the purpose of the family caregiver benefit program. However, any change to the EI Act must come from Parliament.

---

<sup>1</sup> *P. D. v Canada Employment Insurance Commission*, 2020 SST 726; *MG v Canada Employment Insurance Commission*, 2019 SST 98; *MM v Canada Employment Insurance Commission*, 2019 SST 93.

<sup>2</sup> EI Act, s 23.2(1).

<sup>3</sup> EI Regulations, section 1(6).

<sup>4</sup> See GD3-18 and GD3-19.

<sup>5</sup> See GD2-9.

<sup>6</sup> *Canada (Attorney General) v Levesque*, 2001 FCA 304; *Pannu v Canada (Attorney General)*, 2004 FCA 90.

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

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

## **Conclusion**

[20] Leave to appeal is refused.

Pierre Lafontaine  
Member, Appeal Division