



Citation: *HZ v Canada Employment Insurance Commission*, 2023 SST 1334

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant: H. Z.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated June 15, 2023
(GE-22-3895)

Tribunal member: Melanie Petrunia

Decision date: October 5, 2023

File number: AD-23-689

Decision

[1] Leave (permission) to appeal is refused. The appeal will not proceed.

Overview

[2] The Applicant, H. Z. (Claimant), applied for employment insurance (EI) regular benefits on April 19, 2022. On May 10, 2022, he left Canada to attend the funeral of his sister. He remained outside of Canada to care for his sick father.

[3] The Respondent, the Canada Employment Insurance Commission (Commission) decided that the Claimant could be paid benefits for seven days for his attendance at his sister's funeral, but he was disentitled to benefits for the rest of the period because he was outside Canada.

[4] The Claimant appealed this decision to the Tribunal's General Division. His appeal was dismissed. He now seeks leave to appeal the General Division decision to the Appeal Division. He argues that the General Division made an error of law.

[5] I have to decide whether there is some reviewable error of the General Division on which the appeal might succeed. I am refusing leave to appeal because the Claimant's appeal has no reasonable chance of success.

Issue

[6] Does the Claimant raise some reviewable error upon which the appeal might be allowed?

I am not giving the Claimant permission to appeal

[7] The legal test that the Claimant needs to meet on an application for leave to appeal is a low one: Is there any arguable ground on which the appeal might succeed?¹

¹ This legal test is described in cases like *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12 and *Ingram v Canada (Attorney General)*, 2017 FC 259 at para 16.

[8] To decide this question, I focused on whether the General Division could have made one or more of the relevant errors (or grounds of appeal) listed in the *Department of Employment and Social Development Act* (DESD Act).²

[9] An appeal is not a rehearing of the original claim. Instead, I must decide whether the General Division:

a) failed to provide a fair process;

b) failed to decide an issue that it should have, or decided an issue that it should not have;

c) based its decision on an important factual error;³ or

d) made an error in law.⁴

[10] Before the Claimant can move on to the next stage of the appeal, I have to be satisfied that there is a reasonable chance of success based on one or more of these grounds of appeal. A reasonable chance of success means that the Claimant could argue his case and possibly win. I should also be aware of other possible grounds of appeal not precisely identified by the Claimant.⁵

There is no arguable case that the General Division erred

[11] At the General Division, the Claimant argued that he was outside of Canada to attend the funeral of his sister and then care for his ill father. He was easily reachable

² DESD Act, s 58(2).

³ The language of section 58(1)(c) actually says that the General Division will have erred if it bases its decision on a finding of fact that it makes in a perverse or capricious manner or without regard for the material before it. The Federal Court has defined perverse as “willfully going contrary to the evidence” and defined capricious as “marked or guided by caprice; given to changes of interest or attitude according to whim or fancies; not guided by steady judgment or intent” *Rahi v Canada (Minister of Citizenship and Immigration)* 2012 FC 319.

⁴ This paraphrases the grounds of appeal.

⁵ *Karadeolian v Canada (Attorney General)*, 2016 FC 615; *Joseph v Canada (Attorney General)*, 2017 FC 391.

by potential employers and continued to apply for jobs. He returned to Canada when he received a job offer.⁶

[12] As a general rule, claimants cannot receive EI benefits for periods spent outside of Canada.⁷ There are certain exceptions to this found at section 55 of the *Employment Insurance Regulations* (EI Regulations).

[13] The General Division considered these sections of the legislation. It noted that the Commission had allowed the Claimant to be paid benefits for seven days while he attended his sister's funeral.⁸ It considered the Claimant's arguments and found that he did not meet any other exceptions in the EI Regulations and could not be paid further benefits during the period that he was outside Canada.⁹

[14] The General Division found that it did not need to consider whether the Claimant was available for work, within the meaning of the EI Act, because he did not meet any other exceptions.¹⁰

[15] In his request for leave to appeal, the Claimant argues that the General Division made an error of law by not adequately considering the availability requirements and disproportionately relying on the exceptions in the EI Regulations. He says that the EI Regulations are subservient to the sections of the EI Act concerning availability.¹¹

[16] The Claimant argues that the General Division made an error of law in its application and interpretation of Section 37 of the EI Act. That is the section that says claimant cannot receive benefits when outside of Canada, except "as may otherwise be prescribed". The Claimant argues that this phrase refers to the "prescribed" availability requirements in section 18 of the EI Act.¹²

⁶ GD2-7

⁷ Paragraph 37(b) of the *Employment Insurance Act* (EI Act).

⁸ General Division decision at para 6.

⁹ General Division decision at para 12.

¹⁰ General Division decision at para 12.

¹¹ AD1-7

¹² AD1-7

[17] There is no arguable case that the General Division misinterpreted or misapplied the law. Section 37 of the EI Act clearly sets out that claimants cannot receive benefits for periods when they are outside Canada. The phrase “as may otherwise prescribed” means prescribed by regulation and does not refer to section 18 of the EI Act.¹³ The exceptions are set out in section 55 of the EI Regulations and were considered and applied by the General Division.

[18] A recent Federal Court decision considered these sections of the EI Act and EI Regulations.¹⁴ In that case, the claimant had also argued before the General Division that availability should be the main consideration.¹⁵ The claimant argued that the exceptions in the EI Regulations should be expanded and interpreted in light of modern technology. Like the Claimant in this application, he was continuing to apply for jobs and able to return to Canada on short notice.

[19] The claimant was unsuccessful at the General Division and his application for leave to appeal was denied. The Federal Court agreed that decision to deny leave to appeal was reasonable. The EI Act states that claimants cannot be paid benefits when outside Canada. The exceptions to this are prescribed in the EI Regulations.¹⁶ The listed exceptions cannot be expanded on by the Tribunal.¹⁷

[20] There is no arguable case that the General Division made an error of law in its interpretation or application of the legislation.

[21] Aside from the Claimant’s arguments, I have also considered the other grounds of appeal. The Claimant has not pointed to any procedural unfairness on the part of the General Division, and I see no evidence of procedural unfairness. There is no arguable case that the General Division made an error of jurisdiction or based its decision on an important mistake about the facts.

¹³ This is set out in section 2 of the EI Act.

¹⁴ See *Fiorino v. Canada (Attorney General)*, 2022 FC 1705 (*Fiorino*).

¹⁵ See *Fiorino* at para 7.

¹⁶ See *Fiorino* at para 16.

¹⁷ See *Fiorino* at paras 29 to 31.

[22] The Claimant has not identified any errors of the General Division upon which the appeal might succeed. As a result, I am refusing leave to appeal.

Conclusion

[23] Permission to appeal is refused. This means that the appeal will not proceed.

Melanie Petrunia
Member, Appeal Division