



Citation: *ZU v Canada Employment Insurance Commission*, 2023 SST 1644

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

# **Leave to Appeal Decision**

**Applicant:** Z. U.

**Respondent:** Canada Employment Insurance Commission

---

**Decision under appeal:** General Division decision dated July 31, 2023  
(GE-23-910)

---

**Tribunal member:** Pierre Lafontaine

**Decision date:** November 17, 2023

**File number:** AD-23-804

## Decision

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

## Overview

[2] The Applicant's (Claimant) mother passed away. She asked her employer for a leave of absence, then left Canada to attend the funeral. The Claimant applied for Employment Insurance (EI) benefits.

[3] The Claimant intended to be outside Canada for one month. But her permanent resident card was expired. It took several months for her to get a travel document to return to Canada.

[4] The Respondent (Commission) looked at the Claimant's reasons for taking a leave of absence. It decided that she voluntarily took a leave of absence from her job without just cause. It also decided that, as of July 20, 2022, she was not available for work, and was disentitled from receiving EI regular benefits because she was outside Canada. The Claimant disagreed and appealed to the General Division.

[5] The General Division found that the Claimant had reasonable alternatives than to take a leave of absence and concluded that she took a leave of absence without cause. The General Division found that the Claimant set a personal condition that unduly limited her chances of returning to work because she did not have a valid travel document to return to Canada and therefore concluded she was not available to work. It concluded that the Claimant was disentitled for being outside Canada.

[6] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. The Claimant submits that she tried hard to come back to Canada and return to work as soon as possible. She has suffered financial and moral losses and even faced the risk of losing her job. She has worked all these years in Canada, made a better life for her kids and for herself. This is her country and her home. Her life is here.

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

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

## **Issue**

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

## **Analysis**

[10] 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.

[11] 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.

[12] 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?**

[13] The Claimant submits that she tried hard to come back to Canada and return to work as soon as possible. She has suffered financial and moral losses and even faced the risk of losing her job. She has worked all these years in Canada, made a better life for her kids and for herself. This is her country and her home. Her life is here.

[14] The Claimant's mother passed away on July 12, 2022, and she left Canada for Turkey on July 17, 2022, to attend her funeral. The Claimant confirmed she was originally on an approved leave without pay for 40 days. However, she was unable to return to Canada because her immigration documents had expired, and she had been waiting for the return of her passport. Her return to Canada was delayed until January 22, 2023, while she waited for her travel document.

[15] The uncontradicted evidence shows that the Claimant was outside Canada from July 17, 2022, to January 22, 2023.

[16] The General Division correctly stated that the law says a claimant is disentitled from receiving benefits for the entire period for which they were outside Canada<sup>1</sup>, unless one of the exceptions apply - if the purpose of the trip is to attend the funeral of a member of the claimant's immediate family, the exception applies for a period of seven days.<sup>2</sup>

[17] The General Division found that the Claimant did not prove her availability to work from July 18, 2022, while outside Canada. However, availability needed only to be assessed for the seven days the Claimant met one exception.<sup>3</sup>

[18] The availability of a claimant who benefits from an exception is assessed on a case-by-case basis.

---

<sup>1</sup> See section 37(b) of the *Employment Insurance Act*.

<sup>2</sup> See section 55 of the *Employment Insurance Regulations*.

<sup>3</sup> *Canada (Attorney General) v Elyoumni*, 2013 FCA 151.

[19] In this case, the Claimant's missing travel document did not allow her to come back to Canada. The General Division correctly determined that she had not proven that she was available for work during the seven days she was outside of Canada to attend her mother's funeral.

[20] Regarding the leave of absence issue, I see no reviewable error made by the General Division. Personal reasons unrelated to employment do not provide a claimant with just cause for leaving employment under the law. At the time she decided to take leave of absence on July 12, 2022, the Claimant had the reasonable alternative to obtain her travel document and come back to Canada before the end of her paid leave on July 29, 2022. She decided to leave the country without the appropriate travel document, assuming the risks that this entailed.

[21] After reviewing the appeal file and the General Division's decision as well as considering the Claimant's arguments in support of her request for leave to appeal, I 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**

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

Pierre Lafontaine  
Member, Appeal Division