



Citation: *ST v Canada Employment Insurance Commission*, 2023 SST 1682

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

# **Leave to Appeal Decision**

**Applicant:** S. T.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated September 22, 2023  
(GE-23-1612)

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**Tribunal member:** Solange Losier

**Decision date:** November 27, 2023

**File number:** AD-23-922

## Decision

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

## Overview

[2] S. T. is the Claimant in this case. She applied for Employment Insurance (EI) sickness benefits after she stopped working.<sup>1</sup>

[3] The Canada Employment Insurance Commission (Commission) decided that she couldn't get EI benefits because she was out of Canada.<sup>2</sup> It also decided that she had not proven she would otherwise be available for work if she were not sick. The Claimant appealed that decision to the General Division of the Tribunal.

[4] The General Division came to the same conclusion.<sup>3</sup> It dismissed her appeal finding that she was not entitled to get EI benefits from July 30, 2019 to August 22, 2019 because she was outside of Canada and did not meet the medical treatment exception. Because of that, it decided that it didn't need to consider whether she had proven her availability for the purposes of receiving EI benefits.

[5] The Claimant is now asking for permission to appeal the General Division decision to the Appeal Division.<sup>4</sup> She needs permission for the appeal to move forward.

[6] I am denying the Claimant's request for permission to appeal because it has no reasonable chance of success.<sup>5</sup>

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<sup>1</sup> The Claimant initially applied for EI regular benefits, but then asked the Commission to convert it to EI sickness benefits, see pages GD3-3 and GD3-15.

<sup>2</sup> See the Commission's initial and reconsideration decisions at pages GD3-27 to GD3-28 and GD3-7 to GD3-38.

<sup>3</sup> See General Division decision at pages AD1A-1 to AD1A-9.

<sup>4</sup> See Application to the Appeal Division at pages AD1-1 to AD1-11.

<sup>5</sup> See section 58(2) of the *Department of Employment and Social Development Act* (DESD Act).

## Preliminary Matter

[7] The Claimant applied to the Appeal Division but she didn't use the correct forms to appeal.<sup>6</sup> Because of that, she didn't identify a specific error that the General Division made (also known as the "grounds of appeal").<sup>7</sup>

[8] So, the Tribunal sent the Claimant a letter asking for more information about her appeal.<sup>8</sup> The letter provided information about the types of errors that the Appeal Division could consider.<sup>9</sup> It asked her to identify the specific type of error or errors that the General Division made and to provide reasons to support her position.

[9] The Claimant replied to the Tribunal's letter restating the reasons she disagreed with the General Division's decision and why she was unable to repay the overpayment debt.<sup>10</sup>

## Issue

[10] Is it arguable that the General Division made a reviewable error?

## Analysis

### – The test for getting permission to appeal

[11] An appeal can proceed only if the Appeal Division gives permission to appeal.<sup>11</sup>

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<sup>6</sup> See pages AD1-1 to AD1-11.

<sup>7</sup> See section 58(1) of the DESD Act for grounds of appeal.

<sup>8</sup> See Tribunal letter dated November 3, 2023.

<sup>9</sup> See section 58(1) of the DESD which lists the "grounds of appeal".

<sup>10</sup> See page AB1-1.

<sup>11</sup> See section 56(1) of the DESD Act.

[12] I must be satisfied that the appeal has a reasonable chance of success.<sup>12</sup> This means that there must be some arguable ground upon which the appeal might succeed.<sup>13</sup>

[13] I can only consider certain types of errors. I have to focus on whether the General Division could have made one or more of the relevant errors.<sup>14</sup>

[14] The possible grounds of appeal to the Appeal Division are that the General Division did one of the following:<sup>15</sup>

- proceeded in a way that was unfair
- acted beyond its powers or refused to exercise those powers
- made an error in law
- based its decision on an important error of fact

[15] For the appeal to proceed, I have to find that there is a reasonable chance of success on one of the grounds of appeal.<sup>16</sup>

– **The Claimant’s reasons for appealing to the Appeal Division**

[16] The Claimant argues the following in her application to the Appeal Division:<sup>17</sup>

- She had Glaucoma and didn’t have a choice other than to return home to get the surgery
- She saw eleven eye specialists in Canada and none of them recommended surgery, so she found a private clinic back home
- The surgery abroad was successful

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<sup>12</sup> See section 58(2) of the DESD Act.

<sup>13</sup> See *Osaj v Canada (Attorney General)*, 2016 FC 115, at paragraph 12.

<sup>14</sup> See section 58(1) of the DESD Act.

<sup>15</sup> See section 58(1) of the DESD Act.

<sup>16</sup> See section 58(2) of the DESD Act.

<sup>17</sup> See pages AD1-7 and AD1B-1.

- She is a single mother with a daughter and is receiving Ontario Works, so it is hard for her to repay the amount she owes
- **It is not arguable that the General Division made a reviewable error, so I am not giving the Claimant permission to appeal**

[17] The Claimant did not identify any errors that the General Division made. Even so, I reviewed the file and the General Division decision to see if there were any reviewable errors made.<sup>18</sup>

[18] The Commission decided that the Claimant was not entitled to EI benefits from July 29, 2019 to August 22, 2019 for two reasons.<sup>19</sup> First, she was outside of Canada and not entitled to get EI benefits. Second, she had not proven she was available for work if she were not sick (this is often called “otherwise available for work”). As noted above, this was the decision the Claimant appealed to the General Division.

[19] The General Division had to first decide whether the Claimant was outside of Canada. If so, it had to decide how long she was outside of Canada and for what reason in order to determine whether she met any of the exceptions in law.

[20] The law says that a claimant is not entitled to receive benefits for any period during which the claimant is not in Canada “except as may otherwise be prescribed”.<sup>20</sup> There are some exceptions when a Claimant is not disentitled from getting EI benefits while outside of Canada.<sup>21</sup>

[21] One of those reasons is if a claimant is outside of Canada for the purpose of undergoing, at a hospital, medical clinic or similar facility outside Canada, medical treatment that is not readily or immediately available in the claimant’s area of residence

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<sup>18</sup> See section 58(1) of the DESD Act.

<sup>19</sup> See Commission’s initial decisions at pages GD3-27 and GD3-28 and reconsideration decision at page GD3-27.

<sup>20</sup> See section 37(b) of the EI Act.

<sup>21</sup> See section 55(1) of the *Employment Insurance Regulations* (EI Regulations).

in Canada, if the hospital, clinic or facility is accredited to provide the medical treatment by the appropriate governmental authority outside Canada.<sup>22</sup>

[22] The General Division found that the Claimant was outside of Canada from July 29, 2019 to August 23, 2019.<sup>23</sup> This is consistent with the evidence in the file.<sup>24</sup>

[23] The General Division's decision correctly identified the relevant law and legal test.<sup>25</sup> It explained the general rule that claimants are not entitled to get EI benefits for periods that they are out of Canada unless they meet one of the exceptions in law.

[24] The General Division considered whether the medical treatment exception was applicable in this case.<sup>26</sup> It outlined all of the reasons why the Claimant said she went to Croatia for laser eye surgery.<sup>27</sup>

[25] The General Division found that the Claimant had elected to travel to Croatia for the procedure on her own initiative and was not instructed by a doctor to go.<sup>28</sup>

[26] The General Division concluded that the Claimant had not proven she travelled to Croatia for the purpose of receiving medical treatment that was not readily or immediately available in Canada.<sup>29</sup> Specifically, it found that the laser eye surgery procedure she had in Croatia was in fact readily and immediately available in or around her area of residence.<sup>30</sup>

[27] The General Division also noted that the Claimant had conceded that the laser eye surgery she had in Croatia was readily and immediately available in Canada.<sup>31</sup>

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<sup>22</sup> See section 55(1)(a) of the EI Regulations.

<sup>23</sup> See paragraph 4 of the General Division decision.

<sup>24</sup> See Claimant's responses in her questionnaire at page GD3-18.

<sup>25</sup> See paragraphs 11-15, 17-18 of the General Division decision.

<sup>26</sup> See paragraph 17 of the General Division decision.

<sup>27</sup> See paragraphs 20 of the General Division decision.

<sup>28</sup> See paragraphs 23 and 24 of the General Division decision.

<sup>29</sup> See paragraphs 22, 25-27 of the General Division decision.

<sup>30</sup> See paragraph 22 of the General Division decision.

<sup>31</sup> See paragraphs 24 of the General Division decision.

[28] The General Division ultimately decided that she could not get EI benefits from July 30, 2019 to August 22, 2019 because she was outside of Canada and had not met the medical treatment exception.<sup>32</sup>

[29] Following that, the General Division identified the second issue to be decided (“otherwise available for work”).

[30] The General Division correctly stated that in the case of EI sickness benefits, the Claimant still had to show that she would have been available for work, but for her illness or injury while outside of Canada.<sup>33</sup>

[31] The General Division decided that it didn’t need to consider whether she had proven her availability for the purposes of EI sickness benefits because she had not met the medical treatment exception.<sup>34</sup> The reason is that the availability is not relevant as she did not meet an allowed reason for being outside of Canada.<sup>35</sup>

[32] The General Division acknowledged the Claimant’s argument about the overpayment debt she incurred and her inability to pay.<sup>36</sup> It correctly stated that it had no discretion to waive, forgive, void or write-off the overpayment debt.<sup>37</sup> The reason is that the law does not give the General Division (or the Appeal Division) any authority to write-off overpayment debt.<sup>38</sup>

[33] My authority is limited to determining whether the General Division made a reviewable error in its decision.<sup>39</sup> As noted above in paragraph 14, I can only consider certain types of errors.

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<sup>32</sup> See paragraphs 26 and 27 of the General Division decision.

<sup>33</sup> See section 18(1)(b) of the EI Act and paragraphs 28 and 29 of the General Division decision.

<sup>34</sup> See paragraph 30 of the General Division decision and related footnotes.

<sup>35</sup> See section 18(1)(b) of the EI Act, section 37(b) of the EI Act and section 55(1) of the EI Regulations.

<sup>36</sup> See paragraph 32 of the General Division decision.

<sup>37</sup> See paragraph 35 of the General Division decision.

<sup>38</sup> See section 112.1 of the EI Act

<sup>39</sup> See section 58(1) of the DESD Act and *Marcia v Canada (Attorney General)*, 2016 FC 1367, at paragraph 34.

[34] In my view, the Claimant has not raised a reviewable error that I can consider.<sup>40</sup> She is simply rearguing her case and restating the reasons she was out of Canada. She hasn't pointed to any specific errors.

[35] I acknowledge that she disagrees with the outcome of the General Division's decision and resulting overpayment, but an appeal to the Appeal Division is not a new hearing. I cannot reweigh the evidence in order to come to a different conclusion that is more favourable for the Claimant.<sup>41</sup>

[36] 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.<sup>42</sup>

[37] As well, the General Division stated and applied the relevant sections in law. It only decided the issues it had the power to decide and didn't decide any issues that it had no power to decide.

[38] There is no arguable case that the General Division made a reviewable error in this case. So, there is no reasonable chance of success.

## Conclusion

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

Solange Losier  
Member, Appeal Division

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<sup>40</sup> See section 58(1) of the DESD Act.

<sup>41</sup> See *Garvey v Canada (Attorney General)*, 2018 FCA 118, at paragraph 11.

<sup>42</sup> The Federal Court has said that I should do this in decisions like *Griffin v Canada (Attorney General)*, 2016 FC 874 at paragraph 20 and *Karadeolian v Canada (Attorney General)*, 2016 FC 165 at paragraph 10.