



Citation: *EB v Canada Employment Insurance Commission*, 2024 SST 289

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: E. B.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated February 21, 2024
(GE-24-433)

Tribunal member: Solange Losier

Decision date: March 20, 2024

File number: AD-24-170

Decision

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

Overview

[2] E. B. is the Claimant in this case. She left Canada to go on vacation. She told the Canada Employment Insurance Commission (Commission) that she was out of Canada because she was receiving Employment Insurance (EI) sickness benefits.¹

[3] The Commission decided that she was not entitled to get EI benefits for the period she was outside of Canada from December 25, 2023 to January 3, 2024.² This is called a disentitlement to EI benefits.³ The Claimant appealed the Commission's decision to the General Division of the Tribunal.

[4] In the Commission's written arguments to the General Division, it acknowledged that the date of departure and date of return shouldn't have been included in the disentitlement. As a result, it said that the correct dates of disentitlement should have been from December 26, 2023 to January 2, 2024.

[5] The General Division concluded the same.⁴ It decided that the Claimant was not entitled to get EI benefits while out of Canada, for the period from December 26, 2023 to January 2, 2024. It found that Claimant was on vacation at this time, and did not meet any of the exceptions in law.

[6] The Claimant is now asking for permission to appeal the General Division decision to the Appeal Division.⁵ She says that the General Division didn't follow procedural fairness. She needs permission for the appeal to move forward.

¹ See pages GD3-16 to GD3-17.

² See Commission's reconsideration decision at page GD3-24.

³ Section 37(b) of the *Employment Insurance Act* (EI Act) results in a disentitlement to EI benefits when a Claimant is not in Canada.

⁴ See General Division decision at pages AD1A-1 to AD1A-4.

⁵ See application to the Appeal Division at pages AD1-1 to AD1-7.

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

Issue

[8] Is there an arguable case that the General Division didn't follow a fair process?

Analysis

[9] An appeal can proceed only if the Appeal Division gives permission to appeal.⁷

[10] I must be satisfied that the appeal has a reasonable chance of success.⁸ This means that there must be some arguable ground that the appeal might succeed.⁹

[11] 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 (this is called the "grounds of appeal").¹⁰

[12] The possible grounds of appeal to the Appeal Division are that the General Division did one of the following:¹¹

- 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.

[13] In the Claimant's application to the Appeal Division, she checked off the box that says the General Division didn't follow procedural fairness.¹² She provided some reasons to support her position.

⁶ See section 58(2) of the *Department of Employment and Social Development Act* (DESD Act).

⁷ See section 56(1) of the DESD Act.

⁸ See section 58(2) of the DESD Act.

⁹ See *Osaj v Canada (Attorney General)*, 2016 FC 115, at paragraph 12.

¹⁰ See section 58(1) of the DESD Act.

¹¹ See section 58(1) of the DESD Act.

¹² See page AD1-3.

[14] This decision will focus on whether the General Division proceeded in a way that was unfair (i.e., this is also known as failing to observe a principle of natural justice, or failed to provide a fair process).¹³

[15] If the General Division proceeded in a manner that was unfair, then I can intervene.¹⁴

I am not giving the Claimant permission to appeal

– The Claimant argues that the General Division’s decision was unfair and unreasonable

[16] The Claimant says that the General Division didn’t follow procedural fairness because the decision was not right or reasonable.¹⁵ She wrote that she was on a doctor approved sick leave due to cancer surgery. She explained that her family travels every year at Christmas, so she went with them.

[17] The Claimant maintains that she was unable to work regardless of location, so it was not right or reasonable to deny her EI benefits for 10 days. For example, she says that she could have travelled to British Columbia, which would have been further and she would have received EI benefits.¹⁶

– There is no arguable case that the General Division didn’t follow a fair process

[18] Procedural fairness is about the fairness of the process. It includes procedural protections including the right to an unbiased decision-maker, the right of a party to be heard and to know the case against them and to be given an opportunity to respond.

[19] The law says that Claimants who are not in Canada are not entitled to EI benefits unless they meet one of the exceptions.¹⁷ To meet an exception, a claimant must be outside Canada for one of the allowed reasons.¹⁸

¹³ See section 58(1)(a) of the DESD Act.

¹⁴ See section 58(1)(a) of the DESD Act.

¹⁵ See page AD1-3.

¹⁶ See page AD1B-1.

¹⁷ See section 37(b) of the EI Act.

¹⁸ The exceptions are listed in section 55(1) of the *Employment Insurance Regulations* (EI Regulations). Also, see section 18 of the EI Act for the availability requirements.

[20] The facts in this case are not in dispute. The Claimant was on a sick leave from work after undergoing cancer treatment. She was receiving EI sickness benefits. The Claimant was out of Canada on vacation from December 25, 2023 to January 3, 2024. She reported that she was out of Canada to Service Canada.¹⁹

[21] The General Division found that the Claimant was out of Canada from December 25, 2023 to January 3, 2024.²⁰ It said that she did not meet any of the exceptions or reasons that are allowed in law.²¹ So, it decided that she was disentitled to EI benefits from December 26, 2023 to January 2, 2024 (8 days).²² The date of departure and date of return was not included as part of the disentitlement.²³

[22] The General Division correctly stated and applied the law in this case.²⁴ There is no evidence that the Claimant met any of the exceptions allowed in law. Going on vacation outside of Canada is not one of the exceptions or permitted reasons recognized in law.

[23] As noted by the Claimant, the outcome may have been different had she travelled to British Columbia instead. However, the facts show that she was outside of Canada for the purpose of taking a vacation.

[24] The General Division has to follow the *Employment Insurance Act* and *Employment Insurance Regulations*. It has no discretion to grant EI benefits on the basis that the Claimant says the “rule” or law is unfair.

[25] The Claimant hasn't pointed out how the General Division was procedurally unfair. Her arguments to the Appeal Division amount to a disagreement with the decision outcome and the law itself. But, a disagreement with the outcome and law is not a reviewable error.

¹⁹ See pages GD3-15 to GD3-18.

²⁰ See paragraph 10 of the General Division decision.

²¹ See paragraph 12 of the General Division decision.

²² See paragraph 15 of the General Division decision.

²³ See paragraph 14 of the General Division decision. Also, see *Canada (Attorney General) v Picard*, 2014 FCA 46.

²⁴ See paragraphs 9 and 13 of the General Division decision.

[26] The Appeal Division's mandate is limited to deciding whether the General Division might have made a reviewable error and not whether the result was unfair.²⁵ As well, the Appeal Division does not provide an opportunity for the parties to re-argue their case in order to get a different outcome.

[27] I've reviewed the file and there is no other indication that the General Division proceeded in a way that was unfair to the Claimant.

[28] The Claimant wrote in her appeal forms to the General Division that she is legally deaf, and requested to proceed with the General Division hearing in-writing.²⁶ The General Division granted her request and the hearing proceeded in-writing.²⁷

[29] The General Division also wrote a letter to the Claimant outlining relevant information about the appeal and next steps.²⁸ It asked her to review the documents in the file, as well as the Commission's submission's and to provide her remarks about them. She was provided with enough time to reply, 7 days. So, the Claimant had a full and fair opportunity to present her case, in-writing.

[30] For these reasons, it is not arguable that the General Division failed to provide a fair process. I am also satisfied that the General Division did not misinterpret or fail to properly consider any relevant evidence.²⁹

Conclusion

[31] This appeal has no reasonable chance of success.

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

Solange Losier
Member, Appeal Division

²⁵ See *Marcia v Canada (Attorney General)*, 2016 FC 1367, at paragraph 34.

²⁶ See page GD2-4.

²⁷ See pages GD1-1 to GD1-2.

²⁸ See pages GD5-1 to GD5-3.

²⁹ The Federal Court recommends doing such a review in *Karadeolian v Canada (Attorney General)*, 2016 FC 165 at paragraph 10.