



Citation: *RT v Canada Employment Insurance Commission*, 2024 SST 1232

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

# **Leave to Appeal Decision**

**Applicant:** R. T.

**Respondent:** Canada Employment Insurance Commission

---

**Decision under appeal:** General Division decision dated August 26, 2024  
(GE-24-1835)

---

**Tribunal member:** Melanie Petrunia

**Decision date:** October 15, 2024

**File number:** AD-24-645

## **Decision**

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

## **Overview**

[2] The Applicant, R. T. (Claimant), stopped working in order to care for his spouse who was injured in a motor vehicle accident. Earlier, the Claimant had made an initial claim for employment insurance (EI) regular benefits. He asked the Respondent, the Canada Employment Insurance Commission (Commission) to convert his claim to family caregiver benefits.

[3] The Commission decided that the Claimant was not eligible for family caregiver benefits because his spouse was not critically ill or injured. The Claimant appealed this decision to the Tribunal's General Division.

[4] The General Division dismissed the Claimant's appeal. It found that the Claimant was not entitled to family caregiver benefits because he did not provide a medical certificate that showed his spouse was critically ill or injured.

[5] The Claimant is now asking to appeal the General Division decision to the Tribunal's Appeal Division. However, he needs permission for his appeal to move forward. The Claimant says that the General Division made an error of law in its decision.

[6] 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**

[7] Is there an arguable case that the General Division made a reviewable error?

## I am not giving the Claimant permission to appeal

[8] 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?<sup>1</sup>

[9] 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).<sup>2</sup>

[10] 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;<sup>3</sup> or

d) made an error in law.<sup>4</sup>

[11] 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.<sup>5</sup>

---

<sup>1</sup> 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.

<sup>2</sup> DESD Act, s 58(2).

<sup>3</sup> 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.

<sup>4</sup> This paraphrases the grounds of appeal.

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

## **There is no arguable case that the General Division erred**

[12] Family caregiver benefits for adults are payable to a family member when they care for a “critically ill adult.” The law says that a medical certificate must be provided that certifies the adult is a “critically ill adult” and requires the care or support of one or more family members. The medical certificate must also state the period during which the adult requires care or support.<sup>6</sup>

[13] A “critically ill adult” is defined in the law as a person over 18 years of age whose “baseline state of health has significantly changed and whose life is at risk as a result of the illness or injury.”<sup>7</sup>

[14] The Claimant’s spouse was seriously injured in a motor vehicle accident outside of Canada. Approximately two months after the accident she was medically cleared to return to Canada but required care. The Claimant provided care and support to his spouse and was unable to work.<sup>8</sup>

[15] The General Division reviewed the relevant sections of the law.<sup>9</sup> It considered the medical certificate that the Claimant provided. The certificate showed that the Claimant’s spouse had experienced a significant change in her baseline health and required the care and support of a family member. It indicated the period that she would require assistance. The certificate said that the spouse’s life was not at risk.<sup>10</sup>

[16] The Claimant argued before the General Division that his wife clearly required his assistance and that it was unfair to require that her life be at risk.<sup>11</sup> The General Division took the Claimant’s arguments into consideration. It found that it was required to apply the law as written.<sup>12</sup>

---

<sup>6</sup> The requirements to receive family caregiver benefits for adults are set out in section 23.3(1) of the *Employment Insurance Act*.

<sup>7</sup> See section 1(7) of the *Employment Insurance Regulations* for the definition of “critically ill adult.”

<sup>8</sup> General Division decision at para 18.

<sup>9</sup> General Division decision at paras 12 and 13.

<sup>10</sup> General Division decision at paras 16 and 17.

<sup>11</sup> General Division decision at para 19.

<sup>12</sup> General Division decision at para 26.

[17] The law requires that a medical certificate show that the Claimant's spouse meets the definition of "critically ill adult" which means that her life is at risk. Because the certificate produced by the Claimant did not meet this condition, the General Division found that he was not entitled to family caregiver benefits.

[18] In his application for leave to appeal, the Claimant says that the General Division made an error of law. He argues that the law, as written, is unfair. He says that any rational person would realize that there are people who require care as a result of injury or illness whose lives are not at risk.<sup>13</sup>

[19] The Claimant argues that it is absurd that the law is written and interpreted the way that it is. He says that it discriminates against people providing care to injured and ill family members.<sup>14</sup>

[20] I find that the Claimant's arguments have no reasonable chance of success. The Claimant made the same arguments before the General Division and they were considered in its decision. The General Division was correct when it found that it was bound to apply the law.

[21] I understand that the Claimant disagrees with the way that the legislation is written. He had raised this concern with Commission and the General Division discussed it with him at the hearing, explaining that it does not have the power to change the law.<sup>15</sup>

[22] With respect to the Claimant's argument that the law discriminates, he did not raise any challenges to the legislation on the basis of the *Canadian Charter of Rights and Freedoms (Charter)*<sup>16</sup> before the General Division, so there is no arguable case that it failed to consider these arguments.

---

<sup>13</sup> AD1-3

<sup>14</sup> AD1-3

<sup>15</sup> See GD3-48 and recording of General Division hearing.

<sup>16</sup> See *Canadian Charter of Rights and Freedoms*, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c11.

[23] Aside from the Claimant's arguments, I have also considered the other grounds of appeal. The Claimant has not pointed to any errors of jurisdiction, and I see no evidence of such errors. There is no arguable case that the General Division failed to follow procedural fairness or based its decision on any factual errors.

[24] 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**

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

Melanie Petrunia  
Member, Appeal Division