



Citation: *SM v Canada Employment Insurance Commission*, 2025 SST 847

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: S. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated July 14, 2025
(GE-25-1936)

Tribunal member: Elsa Kelly-Rhéaume

Decision date: August 12, 2025

File number: AD-25-509

Decision

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

Overview

[2] S. M. is the Claimant. She applied for sickness benefits starting March 2, 2025. She had been put on preventive leave due to her pregnancy. She then traveled to the United States to be with her husband for the remainder of her pregnancy, so that he could take care of her.

[3] The Canada Employment Insurance Commission (Commission) informed the Claimant that she couldn't be paid EI benefits from March 6, 2025 onward, because she wasn't in Canada. The Claimant asked for a reconsideration of that decision. The Commission upheld its decision.

[4] The Claimant appealed to the General Division. The General Division dismissed her appeal. It decided that the Claimant's reason for being outside of Canada isn't one of the exceptions listed in the law.

[5] The Claimant now wants permission to appeal the General Division decision to the Appeal Division.

Issues

[6] I must decide the following issues:

- a) Is there an arguable case that the General Division made an error of law by misapplying the criteria set out in section 55 of the *Employment Insurance Regulations*?
- b) Is there an arguable case that the General Division made any other reviewable error?

I am not giving the Claimant permission to appeal

[7] The Claimant hasn't shown that her appeal has a reasonable chance of success based on one of the grounds of appeal that would allow me to intervene.

[8] The Appeal Division can only intervene if the General Division has done one of the following:

- 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 fact¹

[9] The law states that I must refuse permission to appeal if I am satisfied that the appeal has no reasonable chance of success.² A reasonable chance of success means that the Claimant has an arguable case.³

There isn't an arguable case that the General Division made an error in law by misapplying section 55 of the *Employment Insurance Regulations*

- **The Claimant does not fall under one of the exceptions**

[10] The Claimant argues in her application to the Appeal Division that the General Division didn't properly apply section 55 of the *Employment Insurance Regulations* (EI Regulations) to her case. Section 55 of the EI Regulations sets out the rules that apply when potential beneficiaries of EI benefits aren't in Canada. Generally speaking, one cannot receive EI benefits outside of Canada. However, specific exceptions to that rule are laid out at section 55(1) of the EI Regulations.

¹ Section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

² Section 58(2) of the DESD Act.

³ *Osaj v Canada (Attorney General)*, 2016 FC 115.

[11] The General Division accurately listed those exceptions in her decision. The General Division wrote that a claimant **can** receive benefits while outside Canada **if** their travel is for one of the following purposes:

- to undergo medical treatment that is not readily available in Canada
- to attend the funeral of an immediate family member
- to accompany an immediate family member to a hospital for medical treatment that is not available in Canada
- to visit a family member who is seriously ill or injured
- to conduct a bona fide job search
- to attend a bona fide job interview⁴

[12] The Claimant doesn't dispute that she left Canada for the United States on March 5, 2025.⁵ She also agrees that her situation doesn't fall within one of the exceptions listed at section 55(1) of the EI Regulations, as she said so at the hearing.⁶

[13] The Claimant said at the hearing that she knows she doesn't fit one of the listed exceptions, but that she had no choice but to go to the United States to be with her husband. The Claimant says that since she was pregnant, she needed him to do the grocery shopping, cook and drive because she isn't driving.⁷ Because she got pregnant through IVF, her doctor advised her to be under more care than for a normal pregnancy.⁸ She told the General Division that she wasn't on bed rest and wasn't receiving any medical treatment in the United States.⁹ The Claimant explained that her

⁴ See Decision GE-25-1936 at paragraph 9.

⁵ See GD3-34. The Claimant wrote in her EI application that she left Canada on March 5, 2025.

⁶ See Decision GE-25-1936 at paragraph 12 and Recording of the Hearing at 00:08:13.

⁷ See Recording of the Hearing at 00:15:00.

⁸ See Recording of the Hearing at 00:14:30.

⁹ See Recording of the Hearing at 00:15:15.

family lives in Iran and so she had no one to take care of her in Canada. This is why she followed her husband to the United States.¹⁰

[14] I understand that with pregnancy, especially one where the woman has been put on preventive leave, comes many potential struggles. I am sympathetic to the Claimant's decision to travel with her husband for the duration of her pregnancy. This is an understandable decision on her part.

[15] That being said, I cannot rewrite the law. Neither could the General Division.

[16] The EI Regulations clearly state that one must be in Canada to be entitled to receive benefits, unless they fall under one of the exceptions. The Claimant doesn't fall under any of the exceptions. The law only provides for an exception for traveling to undergo medical treatment at a hospital or medical clinic.¹¹ This does not include travel to receive care from a family member in the form of cooking or driving. I do not mean to minimize the importance of the help the Claimant requires and that her husband is providing her. But this type of care is not included in the exceptions that allow someone to receive EI benefits outside of Canada.

[17] I understand why the Claimant feels the result is unfair. I understand why she wants to be with her husband in the United States. However, the EI Regulations don't allow me any discretion to add another exception to those listed in section 55(1) of the EI Regulations.

[18] The courts have decided that the list of exceptions is exhaustive. "It seems clear that Parliament, for better or worse, decided upon a very strict approach to the question of entitlement to unemployment insurance benefits for persons outside of Canada [...]"¹²

[19] The Federal Court of Appeal also warned adjudicators against attempting to rewrite legislation or interpreting it in a way that is contrary to its plain meaning.¹³ We

¹⁰ See Recording of the Hearing at 00:14:10.

¹¹ See section 55(1)(a) of the EI Regulations.

¹² See CUB 27413.

¹³ See *Canada (Attorney General) v Knee*, 2011 FCA 301 at paragraph 9.

must refrain from doing so even when we feel that the results in a particular case appear to be harsh.

- Section 55(4) of the EI Regulations does not apply to the Claimant

[20] The Claimant says that the General Division made an error in law. She says that section 55(4) of the EI Regulations states that a claimant isn't disentitled from receiving benefits in respect of pregnancy for the sole reason of being outside Canada. She alleges that the General Division should have considered section 55(4) of the EI Regulations and applied it to her case.¹⁴

[21] The General Division didn't have to consider section 55(4) of the EI Regulations, because it doesn't apply to the Claimant as she had applied for sickness benefits and not pregnancy benefits. The General Division would in fact have made an error in law if it **had** applied section 55(4) of the EI Regulations to her case.

[22] Pregnancy benefits are different than sickness benefits. They are both special benefits but are defined in different sections of the *Employment Insurance Act*.¹⁵ There are different requirements to qualify and be entitled to either.

[23] I understand that the Claimant is pregnant and that her pregnancy is the reason she was put on sick leave from work. That being said, she applied for sickness benefits and those can't be given to a claimant while they are outside Canada, unless their situation specifically falls under one of the exceptions enumerated at section 55(1) of the EI Regulations.

[24] It is true that women can receive pregnancy benefits while outside Canada.

¹⁴ See AD1-3.

¹⁵ Section 21 of the *Employment Insurance Act* defines sickness benefits. Section 22 of the *Employment Insurance Act* defines pregnancy benefits.

[25] This is why the Commission explained to the Claimant that she could ask for pregnancy benefits earlier on than she had anticipated in order to receive some benefits while she is away in the United States.¹⁶

There is no arguable case that the General Division made any other reviewable error

[26] I have reviewed the documents in the record, the General Division decision, and listened to the General Division hearing. I have found no other potential reviewable error.¹⁷

Conclusion

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

Elsa Kelly-Rhéaume
Member, Appeal Division

¹⁶ See GD3-46. The Claimant was informed that she can switch to maternity benefits earlier, either 12 weeks before her expected date of birth or at the actual date of birth.

¹⁷ See *Karadeolian v Canada (Attorney General)*, 2016 FC 615.