



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *F. H. v. Canada Employment Insurance Commission*, 2018 SST 1126

Tribunal File Number: AD-18-525

BETWEEN:

**F. H.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: October 31, 2018

## DECISION AND REASONS

### DECISION

[1] The Tribunal refuses leave to appeal to the Appeal Division.

### OVERVIEW

[2] The Applicant, F. H. (Claimant), worked as a day labourer for X. She was on sick leave until October 21, 2017, but, on October 12, 2017, she sent the employer a resignation letter to let them know that she was leaving her employment. The Commission (Respondent) denied the Claimant's application because it found that voluntarily leaving her employment was not her only reasonable alternative. The Claimant requested a reconsideration of that decision, but the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[3] The General Division found that the Claimant had left her employment but that she had called her employer back afterwards because she had changed her mind. By that time, the employer had already filled her position and did not have any other positions available to offer her. The General Division found that the Claimant had reasonable alternatives to leaving, such as discussing the situation with her employer or seeking other employment before leaving, which is not what she did.

[4] The Claimant now seeks leave from the Tribunal to appeal the General Division decision.

[5] In support of her application for leave to appeal, the Claimant states that the General Division misunderstood her and that she wishes to be heard again.

[6] On August 23, 2018, the Tribunal asked the Claimant in writing to provide her detailed grounds of appeal in support of her application for leave to appeal under section 58(1) of the *Department of Employment and Social Development Act (DESDA)*.

[7] In her response to the Tribunal, the Applicant provided various documents in support of her application for leave to appeal. She provided the medical certificate indicating that she could

resume her employment starting October 19, 2017; a formal demand that her employer had sent her to stop her harassment; and her industrial machine operator certificate.

[8] On September 10, 2018, the Tribunal asked the Claimant again in writing to provide her detailed grounds of appeal in support of her application for leave to appeal under section 58(1) of the DESDA.

[9] In her response to the Tribunal, the Applicant indicated that she had no other choice but to leave her employment because she was having problems with her former spouse, who was known to her employer. She said that she does not need the Tribunal because she considers the whole thing to be a waste of time.

[10] On October 16, 2018, the Tribunal asked the Claimant one last time in writing to provide her detailed grounds of appeal in support of her application for leave to appeal under section 58(1) of the DESDA.

[11] In her response to the Tribunal, the Applicant said that she was going through a separation and that her employer knew her former spouse. She resigned on the spur of the moment, and her employer ignored her afterwards.

[12] The Tribunal must determine whether there is an arguable case that the General Division made a reviewable error that gives the appeal a reasonable chance of success.

[13] The Tribunal refuses leave to appeal because the Claimant has not raised any ground of appeal that gives the appeal a reasonable chance of success.

## **ISSUE**

[14] In her grounds of appeal, has the Claimant identified a reviewable error that the General Division may have made and that gives the appeal a reasonable chance of success?

## **ANALYSIS**

[15] Section 58(1) of the DESDA sets out the only grounds of appeal of a General Division decision. These reviewable errors are that the General Division failed to observe a principle of

natural justice or otherwise acted beyond or refused to exercise its jurisdiction; erred in law in making its decision, whether or not the error appears on the face of the record; or based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[16] An application for leave to appeal is a preliminary step to a hearing on the merits of the case. It is an initial hurdle for a claimant to meet, but it is lower than the one that must be met at the hearing of the appeal on the merits. At the application for leave to appeal stage, a claimant does not have to prove their case; instead they must establish that their appeal has a reasonable chance of success. In other words, they must show that there is arguably some reviewable error based on which the appeal may succeed.

[17] The Tribunal will grant leave to appeal if it is satisfied that at least one of the grounds a claimant raises gives an appeal a reasonable chance of success.

[18] This means that the Tribunal must be in a position to determine, in accordance with section 58(1) of the DESDA, whether there is an issue of natural justice, jurisdiction, law, or fact that may lead to the setting aside of the decision under review.

**Issue: In her grounds of appeal, has the Claimant identified a reviewable error that the General Division may have made and that gives the appeal a reasonable chance of success?**

[19] In support of her application for leave to appeal, the Claimant says that the General Division misunderstood her and that she wishes to be heard again. She has resubmitted before the Appeal Division her medical certificate indicating that she could resume her employment starting October 19, 2017; a formal demand that her employer had sent her in January 2018 to stop her harassment; and her industrial machine operator certificate. The Applicant argues that she had no other choice but to leave her employment because she was having problems with her former spouse, who was known to her employer. She resigned on the spur of the moment, and her employer ignored her afterwards.

[20] The issue before the General Division was whether the Claimant had voluntarily left her employment without just cause within the meaning of sections 29 and 30 of the *Employment Insurance Act*.

[21] Given the Applicant's grounds of appeal, the Tribunal proceeded to listen to the recording of the General Division hearing. The Claimant testified that she did not really want to leave her employment. She wanted to put pressure on her employer to get an operator's position because she has an industrial machine operator certificate. This did not work because her employer simply ignored her. She left her employment on the spur of the moment. She tried to get her job back but was unsuccessful.

[22] The General Division found that the Claimant had left her employment on the [translation] "spur of the moment" to get the job that she wanted, namely, the job as an operator. It found that the Applicant had called her employer back afterwards because she had changed her mind. By that time, the employer stated that they had already filled her position and did not have any other positions available to offer her.

[23] The General Division found that the Claimant had reasonable alternatives to leaving, such as discussing the situation with her employer or seeking other employment before leaving, which is not what she did.

[24] The Tribunal notes that the General Division correctly stated the applicable legal test. It applied this test to the facts that the Applicant raised, and it asked itself whether the Claimant, having regard to all the circumstances, had no reasonable alternative to leaving her employment.

[25] Based on the information on file, the General Division found that the Claimant did not have just cause for voluntarily leaving her employment on October 12, 2017, because the decision to leave her employment at that time was not her only reasonable alternative.

[26] Unfortunately for the Applicant, an appeal to the Appeal Division is not an appeal in which there is a new hearing where a party can present their evidence again and hope for a favourable decision.

[27] The Tribunal notes that, despite the Tribunal's specific requests to do so, the Claimant has not raised any issue of law, fact, or jurisdiction that may lead to the setting aside of the decision under review.

[28] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for leave to appeal, the Tribunal has no choice but to conclude that the appeal has no reasonable chance of success.

**CONCLUSION**

[29] The Tribunal refuses leave to appeal to the Appeal Division.

Pierre Lafontaine  
Member, Appeal Division

REPRESENTATIVE:	F. H., self-represented
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