



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *A. A. v. Canada Employment Insurance Commission*, 2018 SST 1266

Tribunal File Number: AD-18-627

BETWEEN:

**A. A.**

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: Shu-Tai Cheng

Date of Decision: December 4, 2018

## **DECISION AND REASONS**

### **DECISION**

[1] The application for leave to appeal (Application) is refused.

### **OVERVIEW**

[2] The Applicant, A. A., applied for Employment Insurance (EI) benefits, believing that his employer did not have work for him. The employer had expected the Applicant to continue working at a new job site and thought that the Applicant had abandoned his position.

[3] The Respondent, the Canada Employment Insurance Commission (Commission), determined that the Applicant voluntarily left his employment without just cause. The Applicant requested reconsideration. The Commission maintained its initial decision.

[4] The General Division found that the Applicant voluntarily left his employment; there were reasonable alternatives to leaving his employment, so he did not have just cause; and he was properly disqualified from receiving EI benefits.

[5] The Applicant filed the Application with the Appeal Division and submitted that the General Division did not properly evaluate his case. He argues that the General Division refused to consider extreme weather to be a legitimate reason for seeking EI and that it erred in law.

[6] I find that the appeal does not have a reasonable chance of success because the Application simply repeats arguments the Applicant made to the General Division and does not disclose any reviewable errors.

### **ISSUES**

[7] Is there an arguable case that the General Division erred in law by failing to consider extreme weather a valid reason for seeking EI?

[8] Is there an arguable case that the General Division made a serious error in its findings of fact by concluding that the Applicant did not have just cause for voluntarily leaving his employment?

## ANALYSIS

[9] An applicant must seek leave to appeal in order to appeal a General Division decision. The Appeal Division must either grant or refuse leave to appeal, and an appeal can proceed only if leave to appeal is granted.<sup>1</sup>

[10] Before I can grant leave to appeal, I must decide whether the appeal has a reasonable chance of success. In other words, is there an arguable ground upon which the proposed appeal might succeed?<sup>2</sup>

[11] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success<sup>3</sup> based on a reviewable error.<sup>4</sup> The only reviewable errors are the following: 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.

[12] The Applicant submits that the General Division failed to take into account extreme weather as the reason he could not continue his work. He argues that his exterior window cleaning job was unsafe in the cold weather.

### **Issue 1: Is there an arguable case that the General Division erred in law by failing to consider extreme weather a valid reason for seeking EI?**

[13] I find that there is no arguable case that the General Division erred in law.

[14] The Application states that the General Division dismissed the appeal because it did not consider extreme weather and its impact on seasonal work to be legitimate reasons for seeking EI. It also argues that the employer should have used other means of communication, in addition to text messages, to tell the Applicant that there was other work.

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<sup>1</sup> *Department of Employment and Social Development Act* (DESD Act) at ss 56(1) and 58(3).

<sup>2</sup> *Osaj v Canada (Attorney General)*, 2016 FC 115, at para 12; *Murphy v Canada (Attorney General)*, 2016 FC 1208, at para 36; *Glover v Canada (Attorney General)*, 2017 FC 363, at para 22.

<sup>3</sup> DESD Act at s 58(2).

<sup>4</sup> *Ibid.* at s 58(1).

[15] This appeal turns on whether the Applicant had just cause for voluntarily leaving his employment. While the Applicant disputes that he voluntarily left his employment on the basis that the weather had become too cold for the work he performed, the General Division found that the Applicant asked his employer if he could go on Employment Insurance and the employer replied that there was other work and provided the address of the new worksite; the Applicant chose not to go to the new worksite or follow up with the employer; and the Applicant had a choice to stay or leave his employment and he voluntarily left.<sup>5</sup>

[16] The General Division then analyzed whether the Applicant had just cause to voluntarily leave his employment and concluded that there were reasonable alternatives available to him, so he did not have just cause.<sup>6</sup>

[17] The General Division correctly stated the relevant legislative provisions, the binding jurisprudence, and the applicable legal tests.<sup>7</sup>

[18] The General Division considered the Applicant's arguments and the evidence on file. It considered his testimony and the reasons he gave to explain his separation from work. The General Division decision includes an analysis of each of the Applicant's arguments, including that the weather prevented any further work for the season. The General Division did not err in law by failing to consider the Applicant's relevant arguments.

[19] The appeal does not have a reasonable chance of success based on this ground.

**Issue 2: Is there an arguable case that the General Division made a serious error in its findings of fact by concluding that the Applicant did not have just cause for voluntarily leaving his employment?**

[20] I find that there is no arguable case that the General Division made a serious error in its findings of fact.

[21] The General Division took the evidence in the documentary record into account. It also considered the testimony that the Applicant gave during the videoconference hearing.

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<sup>5</sup> General Division decision at paras 9–14.

<sup>6</sup> *Ibid.* at paras 15–20.

<sup>7</sup> *Ibid.* at paras 6–8, 14–15, 19–20.

[22] The General Division considered the Applicant's circumstances and found that he had a number of reasonable alternatives to leaving his employment when he did. Reasonable alternatives available to the Applicant included contacting the employer to confirm the location of the new worksite and confirming whether he was being laid off due to the change of weather and the seasonal nature of the work.<sup>8</sup>

[23] The Applicant's submissions before the General Division, which included each of the arguments set out in the Application, were noted in the General Division decision.<sup>9</sup> In essence, the Applicant seeks to reargue his case based on arguments similar to those he made at the General Division. A simple repetition of his arguments falls short of disclosing a ground of appeal that is based on a reviewable error.

## CONCLUSION

[24] I am satisfied that the appeal has no reasonable chance of success, so the Application is refused.

Shu-Tai Cheng  
Member, Appeal Division

REPRESENTATIVE:	A. A., self-represented
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<sup>8</sup> *Ibid.* para 16.

<sup>9</sup> *Ibid.* paras 9, 13, and 17–19.