



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *V. A. v. Canada Employment Insurance Commission*, 2018 SST 1267

Tribunal File Number: AD-18-731

BETWEEN:

**V. A.**

Applicant

and

**Canada Employment Insurance Commission**

Respondent

---

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

---

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: December 4, 2018

## DECISION AND REASONS

### DECISION

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

### OVERVIEW

[2] The Applicant, V. A. (Claimant), filed an application for regular benefits. She worked for the employer as a personal care aide. According to the employer, the Claimant stopped working because she voluntarily left her employment. The Claimant denies leaving her job and believes that she was dismissed. The Respondent[,], the [Canada Employment Insurance Commission] (Commission)[,], refused the Claimant's application because it found that voluntarily leaving her employment was not the only reasonable alternative in the situation. The Claimant requested a reconsideration of that decision, but the Commission maintained its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[3] The General Division found that the Claimant had decided to quit her job before the end of her shift without receiving instructions from the employer to leave the premises and collect her personal belongings. It found that the Claimant had reasonable alternatives to leaving her job, particularly discussing the situation with her employer or her union or looking for another job before quitting hers.

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

[5] In support of her application for leave to appeal, the Claimant basically repeats her version of the events that she presented to the General Division.

[6] On November 5, 2018, the Tribunal asked the Claimant in writing to provide her detailed grounds of appeal in support of the 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 [Claimant] repeats her version of the facts to support her position that she did not voluntarily leave her job. She argues that if she had voluntarily left

her job, the employer would have said something to her when she left the workplace, which it did not do.

[8] The Tribunal must decide whether there is an arguable case that the General Division made a reviewable error based on which the appeal might have a reasonable chance of success.

[9] The Tribunal refuses leave to appeal because the Claimant has not raised a ground of appeal on which the appeal might succeed.

### **ISSUE**

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

### **ANALYSIS**

[11] Section 58(1) of the DESDA specifies 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.

[12] 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 the Claimant to meet, but it is lower than the one that must be met on the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove her case; she must instead establish that the appeal has a reasonable chance of success. In other words, the Claimant must show that there is arguably some reviewable error based on which the appeal might succeed.

[13] The Tribunal will grant leave to appeal if it is satisfied that at least one of the grounds of appeal that the Claimant has raised has a reasonable chance of success.

[14] 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 justify setting aside the decision under review.

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

[15] The issue under appeal before the General Division was whether the Claimant had voluntarily left her employment without just cause under sections 29 and 30 of the *Employment Insurance Act* (EI Act).

[16] The General Division found that the Claimant had decided to quit her job before the end of her shift without receiving instructions from the employer to leave the premises and collect her personal belongings.

[17] It found that the Claimant had reasonable alternatives to leaving her job, particularly discussing the situation with her employer or her union or looking for another job before quitting hers.

[18] The Tribunal finds that the General Division correctly stated the applicable legal test. It applied said test to the facts that the [Claimant] presented, and asked whether, having regard to all the circumstances, the Claimant had no reasonable alternative to leaving her employment.

[19] Based on the information on file, the General Division determined that the Claimant did not have just cause for voluntarily leaving her employment because leaving her employment at that time was not the only reasonable alternative in the situation.

[20] Consistent case law states that a claimant whose employment is terminated because they gave their employer notice of their intention to leave their job verbally, in writing, or by their actions must be considered as having left their employment voluntarily under the EI Act even if they later express a desire to remain in their employment or change their mind.

[21] Unfortunately for the [Claimant], 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.

[22] The Tribunal finds that, despite its specific requests to do so, the Claimant did not raise any issue of law, fact, or jurisdiction that might justify setting aside the decision under review.

[23] After reviewing of 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 find that the appeal has no reasonable chance of success.

**CONCLUSION**

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

Pierre Lafontaine  
Member, Appeal Division

REPRESENTATIVE:	V. A., self-represented
-----------------	-------------------------