



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *M. P. v Canada Employment Insurance Commission*, 2018 SST 1298

Tribunal File Number: AD-18-666

BETWEEN:

**M. P.**

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 18, 2018

## **DECISION AND REASONS**

### **DECISION**

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

### **OVERVIEW**

[2] The Applicant, M. P., applied for Employment Insurance (EI) benefits. He argued that a pay cheque bounced and the trucks he was operating had all broken down, so he asked his employer to tell him when things were resolved and left the work site. He maintains that he took leave from work and that the employer did not call him to return.

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

[4] The General Division found that the Applicant voluntarily left his employment; that he did not have just cause for leaving his employment because there were reasonable alternatives to leaving; and that 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's decision was based on important errors in the findings of facts.

[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.

### **ISSUE**

[7] 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

[8] 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>

[9] 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>

[10] 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; it erred in law in making its decision, whether or not the error appears on the face of the record; or it 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.

[11] The Applicant submits that the General Division failed to take into account his personal circumstances and failed to understand that he did not voluntarily leave his employment.

**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?**

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

[13] The General Division considered the evidence in the documentary record. It also considered the testimony that the Applicant gave during the teleconference hearing.

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<sup>1</sup> *Department of Employment and Social Development Act* (DESD Act), 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, s 58(2).

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

[14] The General Division considered the Applicant's circumstances<sup>5</sup> and the fact that a pay cheque had bounced.<sup>6</sup> It also conducted a full analysis of the issues of the Applicant's separation from work in November 2016, the voluntary nature of this separation, and whether he had reasonable alternatives to leaving.

[15] The General Division considered the Applicant's circumstances and found that he had several reasonable alternatives to leaving his employment when he did.

[16] In the Application, the Applicant argues that the General Division's findings of fact were based on important errors because of the following:

- a) He had told his employer that he was taking time off until the trucks were fixed.
- b) He left the work site (a remote camp) due to dangerous work conditions and because his duties had been changed and his pay cheque had bounced.
- c) Essentially, there was no work for him driving trucks and he was concerned about being paid, so there was no actual job for him to leave.
- d) He was three hours away from that work site and could have returned, but the employer did not call him back.

[17] The Applicant's submissions before the General Division, which included each of the above arguments, were noted in the General Division decision.<sup>7</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.

[18] The Application also argues that the General Division should have considered various Canadian Umpire Benefit (CUB) decisions related to shortages in pay or fear for one's safety being just cause for voluntarily leaving one's employment. CUB decisions are not binding on

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<sup>5</sup> General Division decision at paras 7, 9–12, 14, 16–21, 23, and 25.

<sup>6</sup> General Division decision at paras 9–11, 14, 16, and 18.

<sup>7</sup> *Ibid.* at paras 6–25.

this Tribunal. However, Federal Court and Federal Court of Appeal jurisprudence is. The General Division referred to and applied Federal Court of Appeal jurisprudence.

[19] The Applicant's first pay cheque had bounced, but the employer corrected the problem within a day. The subsequent pay did not bounce, but the Applicant argues that he was not paid enough. He also argues that he was concerned for his safety. The General Division found that the Applicant did not discuss the issues he had with his employer before deciding to leave; therefore, he did not show that he had no reasonable alternative to leaving his employment when he did. This finding was not made in a capricious manner or without regard to the material before it.

[20] The appeal has no reasonable chance of success based on the grounds raised in the Application.

[21] I have read and considered the General Division decision and the documentary record. My review does not indicate that the General Division overlooked or misconstrued important evidence. There is no suggestion that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction, or that it erred in law in coming to its decision.

[22] I am satisfied that the appeal has no reasonable chance of success.

## **CONCLUSION**

[23] The Application is refused.

Shu-Tai Cheng  
Member, Appeal Division

REPRESENTATIVE:	B. P., for the Applicant
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