



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *M. U. v Canada Employment Insurance Commission*, 2019 SST 39

Tribunal File Number: AD-19-14

BETWEEN:

**M. U.**

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: January 18, 2019

## **DECISION AND REASONS**

### **DECISION**

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

### **OVERVIEW**

[2] The Applicant, M. U. (Claimant), applied for Employment Insurance benefits and established a benefit period. She worked for X from June 1 to June 23, 2017, when she voluntarily left her employment. The Respondent, the Canada Employment Insurance Commission (Commission), determined that the Claimant had earnings that needed to be allocated, and this has resulted in an overpayment of \$490.

[3] The Commission also determined that the Claimant had voluntarily left her employment without just cause because she left for personal reasons, so it disqualified her from receiving benefits and sent her a notice of debt citing an overpayment of \$5,930. The Commission imposed a penalty on the Claimant for making one misrepresentation and imposed a very serious violation; however, the Commission later withdrew the penalty and violation on reconsideration. The Claimant appealed the reconsideration decision to the General Division.

[4] The General Division concluded that the earnings information the employer reported was correct and that the earnings had to be allocated to the weeks in which the Claimant received them. The General Division also concluded that the Claimant left her employment voluntarily and that she had reasonable alternatives to quitting, namely, looking for another job before leaving, consulting her doctor, and discussing the situation with her employer.

[5] The Claimant now seeks leave to appeal the General Division's decision to the Appeal Division.

[6] The Tribunal must decide whether the Claimant's appeal has a reasonable chance of success based on a reviewable error made by the General Division.

[7] The Tribunal refuses leave to appeal because the Claimant's appeal has no reasonable chance of success.

## **ISSUE**

[8] Does the Claimant's appeal have a reasonable chance of success based on a reviewable error made by the General Division?

## **ANALYSIS**

[9] Section 58(1) of the *Department of Employment and Social Development Act* (DESD Act) 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 had made in a perverse or capricious manner or without regard for the material before it.

[10] An application for leave to appeal is a preliminary step to a hearing on the merits. 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 based on a reviewable error. In other words, the Claimant must show that there is arguably some reviewable error on which the appeal might succeed.

[11] Therefore, before leave can be granted, the Tribunal must be satisfied that the reasons for appeal fall within any of the above-mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success.

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

**[13] Issue: Does the Claimant's appeal have a reasonable chance of success based on a reviewable error made by the General Division?**

[14] The Claimant states that she did not leave for personal reasons as the General Division concluded but because she did not receive proper training from her employer, which caused her stress and anxiety and prevented her from doing her job correctly. She also stated that the employer did not communicate with her and was disrespectful and that no one could help her because the other employees were all busy with their own tasks.

[15] In support of her application for leave to appeal, the Claimant essentially submits that the General Division erred in law by ignoring evidence and in applying the legal test for voluntary leave because she had just cause to leave her employment under sections 29 and 30 of the *Employment Insurance Act* (EI Act).

[16] The General Division had to determine whether the Claimant had just cause to voluntarily leave her employment at the time she left.

[17] Whether a person had just cause to voluntarily leave an employment depends on whether they had no reasonable alternative to leaving, having regard to all the circumstances, including the specific circumstances listed in section 29 of the EI Act.

[18] The General Division did consider the Claimant's evidence regarding stress and her discomfort with her duties but concluded that the Claimant could have taken the time to talk to her employer or to her physician before leaving the job that she had.

[19] The General Division concluded that the working conditions were not so intolerable that the Claimant had to leave when she did because she later asked to return to her job.<sup>1</sup> The General Division also determined that she could have continued looking for work and waited until she found a job that better suited her needs before leaving the one that she had.

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<sup>1</sup> GD3A-50.

[20] The Tribunal notices that the employer mentioned that the reasons the Claimant left her employment were related to transportation time and costs.<sup>2</sup> The Claimant agreed on two occasions with her employer's statement.<sup>3</sup>

[21] Jurisprudence has clearly established that transportation difficulties do not constitute just cause for voluntary leaving an employment. In this case, the Claimant knew when she accepted her employment what the transportation requirements were. Furthermore, the evidence shows that the Claimant later found a new job only blocks away from her employer.

[22] In her leave to appeal application, the Claimant would essentially like to re-present her case. Unfortunately for the Claimant, an appeal to the Appeal Division of the Tribunal is not a new hearing where a party can re-present their evidence and hope for a new, favourable outcome.

[23] In her application for leave to appeal, the Claimant has not identified any reviewable errors, such as errors of jurisdiction, or any failure by the General Division to observe a principle of natural justice. She has identified neither errors in law nor any erroneous findings of fact that the General Division may have made in a perverse or capricious manner or without regard for the material before it when coming to its decision.

[24] For the above-mentioned reasons and after reviewing the appeal docket and the General Division's decision and considering the Claimant's arguments in support of her request for leave to appeal, the Tribunal finds that the appeal has no reasonable chance of success.

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<sup>2</sup> GD3A-25.

<sup>3</sup> GD3A-30, GD3A-32.

**CONCLUSION**

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

Pierre Lafontaine  
Member, Appeal Division

REPRESENTATIVE:	M. U., self-represented
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