



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *F. R. v Canada Employment Insurance Commission*, 2019 SST 84

Tribunal File Number: AD-18-889

BETWEEN:

F. R.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Jude Samson

Date of Decision: February 5, 2019

DECISION AND REASONS

DECISION

[1] The application requesting leave to appeal is refused.

OVERVIEW

[2] The Applicant, F. R. (Claimant), lived and worked in Ontario for many years but then decided to move back to her home province of Newfoundland and Labrador, mostly for financial reasons. After moving, she applied for regular Employment Insurance (EI) benefits, but the Respondent, the Canada Employment Insurance Commission (Commission), concluded that she was disqualified from receiving those benefits because she had voluntarily left her previous job without just cause.¹ The Claimant challenged the Commission's decision, but the Commission maintained its initial decision on reconsideration.

[3] The Claimant then appealed the Commission's reconsideration decision to the Tribunal's General Division, but it dismissed her appeal. In short, the General Division concluded that the Claimant had good reasons for leaving her job in Ontario, but that they did not amount to just cause, as required by the *Employment Insurance Act* (EI Act). Instead, the General Division concluded that the Claimant could have stayed in Ontario until she found a job in Newfoundland and Labrador.

[4] The Claimant now wants to appeal the General Division decision to the Tribunal's Appeal Division, but she requires leave (or permission) to appeal for the file to move forward. Unfortunately for the Claimant, however, I have concluded that her appeal has no reasonable chance of success, meaning that I must refuse the application for leave to appeal.

ISSUES

[5] In reaching this decision, I focused on the following issues:

¹ *Employment Insurance Act*, ss 29 and 30.

- a) Is there an arguable case that the General Division committed an error by concluding that the Claimant's financial situation did not amount to just cause for leaving her employment?
- b) Is there another arguable ground on which the appeal might succeed?

ANALYSIS

The Appeal Division's Legal Framework

[6] The Tribunal has two divisions that operate quite differently from one another. At the Appeal Division, the focus is on whether the General Division might have committed one or more of the three errors (or grounds of appeal) set out in section 58(1) of the *Department of Employment and Social Development Act* (DESD Act). Generally speaking, the only relevant errors are whether the General Division:

- a) breached a principle of natural justice or made an error relating to its jurisdiction;
- b) rendered a decision that contains an error of law; or
- c) 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.

[7] There are also procedural differences between the Tribunal's two divisions. Most cases before the Appeal Division follow a two-step process: the leave to appeal stage and the merits stage. This appeal is at the leave to appeal stage, meaning that permission must be granted for it to move forward. This is a preliminary hurdle aimed at filtering out cases that have no reasonable chance of success.² The legal test that applicants need to meet at this stage is a low one: Is there any arguable ground on which the appeal might succeed?³

² DESD Act, s 58(2).

³ *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12; *Ingram v Canada (Attorney General)*, 2017 FC 259 at para 16.

Issue 1: Is there an arguable case that the General Division committed an error by concluding that the Claimant's financial situation did not amount to just cause for leaving her employment?

[8] Under section 30 of the EI Act, claimants are disqualified from receiving any benefits if they voluntarily left their job without just cause. To establish just cause, claimants must prove, on a balance of probabilities, that they had no reasonable alternative but to leave their job.⁴ As part of this assessment, the Tribunal must consider all of the relevant circumstances, including those listed under section 29(c) of the EI Act.

[9] In this case, the Claimant used her request for leave to appeal as an opportunity to reargue her case, with little or no reference to the recognized grounds of appeal described above.⁵ As a result, the Tribunal asked the Claimant to provide more specific details about her reasons for appealing the General Division decision and to connect those reasons to the grounds of appeal listed under section 58(1) of the DESD Act. The Claimant did this in her letter that the Tribunal received on January 27, 2019.⁶ It is now clear, therefore, that the Claimant's challenge is focused on paragraph 15 of the General Division decision, where it says this:

The [Claimant] argued that she left her employment to relieve the financial strains she identified. A general desire to improve one's financial position may be good reason to leave employment but is not "just cause" as contemplated by the Act ([EI Act], paragraph 29(c); *Canada (Attorney General) v. Richard*, 2009 FCA 122).

[10] The Claimant asserts that a person's desire to improve their financial position is a good reason for leaving their job and should also be considered just cause within the meaning of the EI Act. While the Claimant characterized her alleged error as one of fact, I interpret it more as one of law.

[11] In this respect, however, I note that the General Division relied on the Federal Court of Appeal's decision in *Canada (Attorney General) v Richard*, though there are many other decisions that the General Division could have also cited in support of its conclusion.⁷ While the

⁴ *Canada (Attorney General) v White*, 2011 FCA 190 at para 3.

⁵ AD1.

⁶ AD1B-12.

⁷ *Canada (Attorney General) v Campeau*, 2006 FCA 376 at para 21; *Canada (Attorney General) v Langevin*, 2011 FCA 163 at para 5; *Canada (Attorney General) v Langlois*, 2008 FCA 18 at para 31.

Claimant might not like the conclusion reached in these cases, the Tribunal has no choice but to follow them.

[12] Concerning the Claimant's argument that financial circumstances should amount to just cause **in her case**, I understand the Claimant to be alleging that the General Division committed a mixed error of fact and law. Unfortunately, however, this type of error is not one that the Appeal Division can consider.⁸

[13] Overall, therefore, I have concluded that these arguments have no reasonable chance of success.

Issue 2: Is there another arguable ground on which the appeal might succeed?

[14] As part of her request for leave to appeal, the Claimant also asked why Canadians pay into the EI program only to find that it is not available when they need it. She also asked why it covers some people who are unable to work (because of illness or parental responsibilities, for example), but not other people who, for good and valid reasons, find themselves between jobs.

[15] The Claimant raises legitimate questions; however, her complaint should really be directed to Parliament. The EI scheme is a public insurance scheme, the complete terms of which—including those related to disqualifications—are set out in the EI Act. In this case, the Claimant did not meet all of the conditions required to obtain benefits, so none could be paid to her.⁹ Unfortunately, I cannot bend the requirements of the EI Act, even in compelling or sympathetic cases like this one.¹⁰

[16] When reaching this decision, I was also mindful of Federal Court decisions in which the Appeal Division has been instructed to go beyond the four corners of the written materials and assess whether the General Division might have misinterpreted or failed to properly consider any

⁸ *Garvey v Canada (Attorney General)*, 2018 FCA 118 at para 7.

⁹ *Pannu v Canada (Attorney General)*, 2004 FCA 90 at para 3.

¹⁰ *Canada (Attorney General) v Knee*, 2011 FCA 301 at para 9.

of the evidence.¹¹ If this is the case, then leave to appeal should normally be granted regardless of any technical problems that might be found in the request for leave to appeal.

[17] However, after reviewing the documentary record and examining the decision under appeal, I am satisfied that the General Division neither misinterpreted nor failed to properly consider any relevant evidence.

CONCLUSION

[18] While I have sympathy for the Claimant's position, I have concluded that her appeal has no reasonable chance of success, meaning that I must refuse her application for leave to appeal.

Jude Samson
Member, Appeal Division

REPRESENTATIVE:	F. R., self-represented
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¹¹ *Griffin v Canada (Attorney General)*, 2016 FC 874 at para 20; *Karadeolian v Canada (Attorney General)*, 2016 FC 615 at para 10.