



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *C. D. v Canada Employment Insurance Commission*, 2019 SST 513

Tribunal File Number: AD-19-332

BETWEEN:

**C. D.**

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: May 27, 2019

## **DECISION AND REASONS**

### **DECISION**

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

### **OVERVIEW**

[2] The Applicant, C. D., applied for Employment Insurance benefits. She argued that she recanted her letter of resignation and was dismissed by her employer. She maintains that she did not voluntarily leave her job.

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

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

[5] The Applicant filed an application for leave to appeal with the Appeal Division and submitted that the General Division did not properly evaluate her case. She argues that the General Division erred in law by treating her situation as a voluntarily leaving instead of a wrongful dismissal.

[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 an error in law or a serious error in its findings of fact by concluding that the Applicant did not have just cause for voluntarily leaving her 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; 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.

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

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

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

[13] The General Division referred to and applied the legal principles and tests set out in binding jurisprudence on the issue of voluntary leaving.<sup>5</sup>

[14] The General Division correctly stated the binding jurisprudence and the applicable legal tests on all the issues in this matter, and, as a result, did not err in law.

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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).

<sup>5</sup> General Division decision at paras 12, 15, 17 and 18.

[15] The appeal has no reasonable chance of success based on this ground.

[16] In addition, I find that the General Division did not base 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.

[17] The General Division considered the evidence about the Applicant's assertion that she recanted her resignation letter and her employer agreed to keep her on.<sup>6</sup> The General Division considered the Applicant's circumstances<sup>7</sup> and the fact that she recanted her resignation.<sup>8</sup> It also conducted a full analysis of the issues of the Applicant's separation from work in May 2018, the voluntary nature of this separation, and whether she had reasonable alternatives to leaving.

[18] The General Division found that the Applicant had recanted her resignation but that her employer had already accepted her resignation and did not accept her revocation of that resignation.<sup>9</sup> Therefore, the Applicant voluntarily left her employment and was not dismissed the employer. The General Division also found that she had a number of reasonable alternatives to resigning when she did.

[19] The General Division did not make these findings in a perverse or capricious manner or without regard for the material before it. The General Division took the evidence in the documentary record into account. It also considered the testimony that the Applicant gave during the teleconference hearing and an audio recording that the Applicant had made of a meeting she had with the employer in which she asked to recant/rescind her resignation.

[20] The Applicant's submissions before the General Division included each of the arguments in the application for leave to appeal and they were noted in the General Division decision. In essence, the Applicant seeks to reargue her case based on arguments similar to those she made at the General Division. A simple repetition of these arguments falls short of disclosing a ground of appeal that is based on a reviewable errors.

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<sup>6</sup> General Division decision at paras. 7-9 and 13-14.

<sup>7</sup> *Ibid.* at paras. 7-9, 13-14, and 20-24.

<sup>8</sup> *Ibid.* at paras. 5-9, 13-14, 19, and 26.

<sup>9</sup> *Ibid.* at paras. 13-14.

[21] The appeal has no reasonable chance of success based on these grounds.

**CONCLUSION**

[22] I am satisfied that the appeal has no reasonable chance of success, so the application for leave to appeal is refused.

Shu-Tai Cheng  
Member, Appeal Division

REPRESENTATIVE:	C. D., self-represented
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