



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *A. P. v Canada Employment Insurance Commission*, 2019 SST 695

Tribunal File Number: AD-19-519

BETWEEN:

**A. 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: Janet Lew

Date of Decision: August 1, 2019

## DECISION AND REASONS

### DECISION

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

### OVERVIEW

[2] The Applicant, A. P. (Claimant), left his employment to pursue a career opportunity in policing. He had just been accepted into a full-time police science program that he expected would eventually lead to work with the regional police.

[3] Not long after leaving his employment, the Claimant applied for Employment Insurance regular benefits. At the same time, he applied to the Fast Forward Program, a regional skills development program.<sup>1</sup> However, the Respondent, the Canada Employment Insurance Commission (Commission), determined that the Claimant had voluntarily left his employment without just cause and that voluntarily leaving was not his only reasonable alternative. As such, it denied his application for Employment Insurance benefits.<sup>2</sup> It did not change its mind on reconsideration.

[4] The Claimant appealed the Commission's reconsideration decision to the General Division, which dismissed his appeal for the same reasons that the Commission had denied his application. The Claimant is now seeking leave to appeal the General Division's decision. This means that he has to get permission from the Appeal Division before he can move on to the next stage of his appeal. The Claimant argues that the General Division overlooked a key fact, namely, that someone had advised him to apply for Employment Insurance before applying to the Fast Forward Program. I must decide whether the appeal has a reasonable chance of success.

[5] For the reasons that follow, I am not satisfied that the appeal has a reasonable chance of success and I am therefore refusing the application for leave to appeal.

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<sup>1</sup> See Claimant's letter (undated), at GD3-28.

<sup>2</sup> See Commission's decision dated February 21, 2019, at GD3-30 to GD3-31 and Commission's reconsideration decision dated March 29, 2019, at GD3-37 to GD3-38.

## ISSUE

[6] Is there an arguable case that the General Division based its decision on an erroneous finding of fact when it decided that the Claimant did not have just cause to leave his employment?

## ANALYSIS

[7] Before granting leave to appeal, I have to be satisfied that the reasons for appeal fall within the grounds of appeal set out under subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA) and that the appeal has a reasonable chance of success. The grounds of appeal under subsection 58(1) of the DESDA are limited to the following:

- (a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- (c) the General Division 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.

[8] A reasonable chance of success is the same thing as an arguable case at law.<sup>3</sup> This is a relatively low bar. At the leave to appeal stage, it is a lower hurdle to clear than the one at the hearing of an appeal on the merits. Claimants do not have to prove their case; they simply have to establish that the appeal has a reasonable chance of success based on a reviewable error.

[9] The Claimant argues that the General Division 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 when it overlooked the fact that someone had advised him that he should apply for Employment Insurance before applying to the Fast Forward program.

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<sup>3</sup> *Fancy v. Canada (Attorney General)*, 2010 FCA 63.

[10] If the Claimant is going to argue that the General Division overlooked key pieces of evidence, that evidence should have been before the General Division. Otherwise, it cannot have overlooked what did not appear before it. Here, I do not see that there was any evidence before the General Division that someone had advised the Claimant that he should apply for Employment Insurance before applying to the Fast Forward program.

[11] Even so, that advice itself fails to appreciate that applicants who quit their job to return to school likely are not eligible for Employment Insurance regular benefits unless they get the Commission's approval before leaving their employment, irrespective of whether they apply for Employment Insurance before they apply to the Fast Forward program. In this case, there was no evidence before the General Division that either the Commission or the provincial government had given their approval to the Claimant to attend the training program before he quit his job.

[12] As the General Division noted, it is well established in the law that leaving one's employment to take a course or program that is not authorized by the Commission does not constitute just cause under subsection 29(c) of the *Employment Insurance Act*.<sup>4</sup>

[13] The Claimant seems to be suggesting that there should be an exception in his case because he relied on either incomplete or erroneous advice to his detriment. However, he does not go so far as to say that someone had also advised him that he should quit his job before applying for Employment Insurance or to the Fast Forward Program. That is a big distinction. One simply cannot quit one's job to attend school without getting approval beforehand from the Commission.

[14] However, even if the Claimant quit his job without getting prior approval from the Commission because of incomplete or erroneous advice, it would not help him because the *Employment Insurance Act* does not provide any relief to claimants who receive erroneous advice or misinformation, even if that advice comes from the Commission.

[15] I have reviewed the underlying record, to ensure that the General Division neither erred in law nor overlooked or misconstrued any important evidence or arguments. The General Division member's summary of the facts is consistent with the evidentiary record and her

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<sup>4</sup> See General Division decision at para. 16.

analysis is sound. The member cited and applied the applicable law as it relates to whether just cause exists where one voluntarily leaves their employment to take a training course. As the General Division noted, leaving his job represented an excellent reason in personal terms, but it does not constitute just cause within the meaning of the *Employment Insurance Act*.

**CONCLUSION**

[16] I am not satisfied that the appeal has a reasonable chance of success and the application for leave to appeal is therefore refused.

Janet Lew  
Member, Appeal Division

REPRESENTATIVES:	A. P., Applicant
	X, Representative for the Applicant