



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *A. C. v Canada Employment Insurance Commission*, 2019 SST 835

Tribunal File Number: AD-19-564

BETWEEN:

**A. C.**

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: September 5, 2019

## **DECISION AND REASONS**

### **DECISION**

[1] Leave to appeal the decision given by the General Division of the Social Security Tribunal of Canada on July 16, 2019, is refused.

### **OVERVIEW**

[2] The Applicant, A. C., applied for Employment Insurance benefits after he resigned from his employment. The Respondent, the Canada Employment Insurance Commission (Commission), found that the Applicant did not have just cause for leaving his employment on February 13, 2019, because he failed to show that he had exhausted all reasonable alternatives before he resigned. As a result, the Applicant is disqualified from receiving benefits.

[3] The Applicant submits that he did not leave his employment voluntarily because he was in a psychological state of depression, and that he had tried to resume his employment in June 2019. He requested reconsideration of the Commission's initial decision, but the Commission upheld its decision.

[4] The Applicant appealed the Commission's decision. The General Division found that the Applicant could [translation] "have easily stayed in his employment if he had wanted to"<sup>1</sup> and [translation] "that his condition did not prevent him from taking concrete action against his employer while taking no action to manage his health before the month of June."<sup>2</sup> Therefore, the General Division found that the Applicant had voluntarily left his employment and failed to demonstrate that he had no reasonable alternative to leaving his employment.

[5] In his application for leave to appeal, the Applicant submitted that the General Division based its decision on important errors regarding the facts in the appeal record and misinterpreted the term "voluntarily" in the applicable legislation.

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<sup>1</sup> General Division decision at para 17.

<sup>2</sup> *Ibid.*

[6] The appeal does not have a reasonable chance of success because the Applicant has not raised any arguable case that the General Division may have made a reviewable error.

## **ISSUE**

[7] Is there an arguable case that the General Division erred in finding that the Applicant voluntarily left 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>3</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 a ground of appeal on which the Applicant might succeed?<sup>4</sup>

[10] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success<sup>5</sup> based on a reviewable error. 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 had made in a perverse or capricious manner or without regard for the material before it.<sup>6</sup>

### **Is there an arguable case that the General Division erred in finding that the Applicant voluntarily left his employment?**

[11] No, there is no arguable case that the General Division erred.

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<sup>3</sup> *Department of Employment and Social Development Act* (DESDA), ss 56(1) and 58(3).

<sup>4</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>5</sup> DESDA, s 58(2).

<sup>6</sup> DESDA, s 58(1).

[12] The *Employment Insurance Act* (EI Act) states that a claimant is disqualified from receiving any benefits if the claimant lost any employment because of their misconduct or voluntarily left any employment without just cause. The term “voluntarily” must be interpreted within the meaning of the EI Act and the relevant case law, and not based on a claimant’s understanding of this wording.

[13] In the case of an alleged voluntary leaving, the burden of proof is on the Commission, which must demonstrate that it was in fact a voluntary leaving. After that, the claimant must demonstrate that, on a balance of probabilities, they had no reasonable alternative to leaving.<sup>7</sup> To determine whether leaving is voluntary, the question to be asked is the following: Did the employee have a choice to stay or leave?<sup>8</sup>

[14] The General Division did not err in its application of the relevant legislation or case law.

[15] According to the Applicant, the General Division should have considered the medical certificate indicating that he was incapacitated from February 13 to 15, when he resigned. He claims that he was not responsible for losing his employment and that his loss of employment was involuntary.

[16] However, on reading the General Division decision, I see that the General Division noted the contents of the medical certificate and the following:

- a) The medical report indicates that the Applicant had not been seen in February 2019.<sup>9</sup>
- b) The medical certificate is dated several months after the events and no consultation happened during the period in question.<sup>10</sup>
- c) The Applicant submits that he did not voluntarily leave his employment.<sup>11</sup> He says that he was in a state of depression.<sup>12</sup>

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<sup>7</sup> *Canada (Attorney General) v White*, 2011 FCA 190.

<sup>8</sup> *Canada (Attorney General) v Peace*, 2004 FCA 56.

<sup>9</sup> General Division decision at para 14.

<sup>10</sup> *Ibid.* at para 15.

<sup>11</sup> *Ibid.* at paras 2 and 9.

<sup>12</sup> *Ibid.* at paras 2, 9, 10, 17, and 25.

[17] Contrary to the Applicant's submission, the General Division considered his arguments and the medical certificate he provided.

[18] The Applicant repeats the arguments he presented to the General Division, but he does not raise any argument showing that the General Division may have based its decision on a reviewable error.

[19] I have also reviewed the evidence on file. There is no indication that the General Division overlooked or misconstrued important evidence. I also find that the General Division did not fail to observe a principle of natural justice or that it otherwise acted beyond or refused to exercise its jurisdiction in coming to its decision. The Applicant has not identified any error of law or any erroneous finding of fact that the General Division may have made in a perverse or capricious manner or without regard for the material before it.

[20] For these reasons, I find that the appeal does not have a reasonable chance of success.

## **CONCLUSION**

[21] Leave to appeal is refused.

Shu-Tai Cheng  
Member, Appeal Division

REPRESENTATIVE:	A. C., self-represented
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