



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation : *G. B. v Canada Employment Insurance Commission*, 2019 SST 1324

Tribunal File Number: AD-19-667

BETWEEN:

**G. B.**

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: November 5, 2019

## **DECISION AND REASONS**

### **DECISION**

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

### **OVERVIEW**

[2] The Applicant, G. B. (Claimant), quit a new job after two weeks and applied for regular benefits. The Respondent (Commission) disqualified her from receiving benefits. It found that she had a reasonable alternative to quitting her job. The Claimant argued that she had no choice but to leave since the job was not suited for her and increased her level of anxiety. The Commission did not change its decision. The Claimant appealed to the General Division.

[3] The General Division 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 prior to leaving or discussing her concerns with her employer.

[4] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. She submits that an agent informed her that her benefits would not be affected should she decide to leave her new job since her eligibility was based on her last twelve months of employment. She is appealing since she would not have been refused her benefits had she not started this new job that affected her health.

[5] A letter was sent to the Claimant requesting that she explain in detail the reasons for her appeal.

[6] In her reply to the Tribunal, the Claimant reiterated that she was misled on two occasions by the service agents who assured her that her employment benefits would not be affected if she was to start a new job and leave it since her eligibility was based on the last twelve months when she worked for her previous employer. She puts forward that if she had been given the correct information, she wouldn't have started the new job and collected her benefits.

[7] The Tribunal must decide whether the Claimant raised some reviewable error of the General Division upon which the appeal might succeed.

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

## **ISSUE**

[9] Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

## **ANALYSIS**

[10] 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; it erred in law in making its decision, whether or not the error appears on the face of the record; or it 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.

[11] 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 but must establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, that there is arguably some reviewable error upon which the appeal might succeed.

[12] Therefore, before leave can be granted, the Tribunal needs to 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.

[13] This means that the Tribunal must be in a position to determine, in accordance with subsection 58(1) of the DESD Act, whether there is a question of natural justice,

jurisdiction, law, or fact, the answer to which may lead to the setting aside of the General Division decision under review.

**Issue: Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?**

[14] The Claimant submits that she was misled on two occasions by the service agents who assured her that her employment benefits would not be affected if she was to start a new job and leave it since her eligibility was based on the last twelve months when she worked for her previous employer. She puts forward that if she had been given the correct information, she wouldn't have started the new job and collected her benefits.

[15] The General Division had to determine whether the Claimant had just cause to voluntarily leave her employment.

[16] Whether one had just cause to voluntarily leave an employment depends on whether she had no reasonable alternative to leaving having regard to all the circumstances including several specific circumstances enumerated in section 29 of the *Employment Insurance Act*.

[17] In her application for benefits, the Claimant declared that she did not discuss the situation with her employer and did not seek other employment prior to leaving. She also declared to the Commission that she had not consulted a doctor prior to her departure. She sent an email on April 30, 2019, informing the employer that she was resigning immediately.

[18] The employer stated that it was unaware of the Claimant's concerns. If the employer had known, it would have looked for ways to accommodate her by giving her more training, adjusting her duties or finding a new role for her.

[19] The General Division concluded from the evidence that the Claimant left her employment voluntarily and that she had reasonable alternatives to quitting, namely, looking for another job, consulting her doctor or discussing her concerns with her employer, before leaving her employment.

[20] The Claimant puts forward that she was misinformed by the Commission regarding the impact on her benefits should she decide to leave her new job. Although the Tribunal is sympathetic toward the Claimant, the Federal Court of Appeal has clearly and constantly decided that an applicant cannot receive money to which they are not entitled, even following a mistake of the Commission.<sup>1</sup>

[21] The Claimant, in her leave to appeal application, would essentially like to represent her case. Unfortunately for the Claimant, an appeal to the Appeal Division of the Tribunal is not a new hearing, where a party can represent its evidence and hope for a new favorable outcome.

[22] In her application for leave to appeal, the Claimant has not identified any reviewable errors such as jurisdiction or any failure by the General Division to observe a principle of natural justice. She has not identified errors in law nor identified any erroneous findings of fact which the General Division may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision.

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

## **CONCLUSION**

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

Pierre Lafontaine  
Member, Appeal Division

REPRESENTATIVE:	G. B., Self-represented
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<sup>1</sup> *Lanuzo v Canada (Attorney General)*, 2005 FCA 324.