



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *JC v Canada Employment Insurance Commission*, 2021 SST 24

Tribunal File Number: AD-20-854

BETWEEN:

J. C.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Pierre Lafontaine

Date of Decision: January 28, 2021

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant (Claimant) worked in a long-term care facility as a Combined Service Worker. This is a unionized position. The Claimant worked doing cleaning and kitchen duties. In November 2019, the Claimant started feeling tired and having back pain because she worked 12-hour shifts. In February 2020, the Claimant retired from her job because she felt she could no longer work the 12-hour shifts.

[3] The Claimant applied for regular employment insurance (EI) benefits. The Canada Employment Insurance Commission (Commission) disqualified her from receiving benefits because it decided that the Claimant had left her job without just cause. After reconsideration, the Commission maintained its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[4] The General Division determined that the Claimant voluntarily quit her job because she retired. It also determined that she had other reasonable alternatives to quitting her job when she did. The General Division concluded that the Claimant voluntarily left her employment without just cause.

[5] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. In her application for leave to appeal, the Claimant puts forward that she had to quit because her back was giving out on her. She submits that she told her employer she would come back as casual, but her back was not getting any better. She puts forward that her doctor gave her a note to stop working in April 2020.

[6] I sent a letter to the Claimant requesting that she explain in detail her grounds of appeal under section 58 of the *Department of Employment and Social Development Act* (DESD Act). I explained to the Claimant that it was not enough to repeat her testimony before the General Division.

[7] In her reply, the Claimant reiterates that she had to leave her employment because of her back. She submits that her employer told her that there were no 8-hour shifts available to accommodate her. Her doctor then told her to retire. She puts forward that she should receive benefits having worked hard for them.

[8] The Claimant confirmed by telephone that she had no other observations to present to the Appeal Division.

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

[10] I am refusing leave to appeal because the Claimant's appeal has no reasonable chance of success.

ISSUE

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

ANALYSIS

[12] Section 58(1) of the DESD Act specifies the only grounds of appeal of a General Division decision. These reviewable errors are that:

- (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 had made in a perverse or capricious manner or without regard for the material before it.

[13] An application for leave to appeal is a preliminary step to a hearing on the merits. The Claimant must meet this initial hurdle, but it is lower than the one of 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.

[14] In other words, I need 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 in appeal, in order to grant leave.

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

[15] In support of her application for leave to appeal, the Claimant puts forward that she had to leave her employment because of her back. She submits that her employer told her that there were no 8-hour shifts available to accommodate her. Her doctor then told her to retire. She puts forward that she should receive benefits having worked hard for them.

[16] The General Division had to determine whether the Claimant had just cause to voluntarily leave her employment. **This must be determined at the time she left.**

[17] Whether a claimant had just cause to voluntarily leave an employment depends on whether they had no reasonable alternative to leaving having regard to all the circumstances.

[18] The evidence before the General Division shows that the Claimant did not speak to her union before she retired from her job. Although she had consulted her doctor about her back pain in November 2019, she did not get a doctor's note until April 7, 2020, after she had left her job. It was only after April 7, 2020, that she spoke with her supervisor about the possibility of returning to work if they could provide her with an 8-hour shift.

[19] The Claimant testified during the hearing that she did not speak to her union before she left her job. She further stated that she should have asked for assistance from her union before leaving.

[20] The General Division found that a reasonable alternative to leaving was for the Claimant to speak to her union representative about her situation before she gave her employer her retirement notice. This would have provided her with an opportunity to get guidance on what documents were necessary to make a formal demand for a shorter shift and receive advice on how to request accommodation from her employer.

[21] The General Division also considered that the Claimant's supervisor and her Human Resources representative both declared that the Claimant informed them of her decision to retire and did not discuss with them the need for accommodation prior to retiring. The Claimant confirmed these statements during the General Division hearing.

[22] The General Division also found that a reasonable alternative to leaving would have been to obtain, before she left the workplace, a doctor's note that supported her decision to retire. She only got this note after she had already retired.

[23] Case law has constantly held that a claimant must demonstrate that they attempted to reach an agreement with the employer to accommodate their health concerns prior to leaving employment.¹

[24] The preponderant evidence before the General Division shows that the Claimant decided to retire instead of exploring other reasonable alternatives.

[25] I find that in her application for leave to appeal, and after my express demand, 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.

[26] 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

¹ *S. A. v Canada Employment Insurance Commission*, 2017 CanLII 73253, *Her Majesty the Queen v Dietrich*, FCA, A-640-93.

support of her request for leave to appeal, I have no choice but to find that the appeal has no reasonable chance of success.

CONCLUSION

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

Pierre Lafontaine
Member, Appeal Division

REPRESENTATIVE:	J. C., Self-represented
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