



Citation: *JC v Canada Employment Insurance Commission*, 2021 SST 588

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

**Applicant:** J. C.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated August 17, 2021  
(GE-21-1259)

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**Tribunal member:** Pierre Lafontaine

**Decision date:** October 14, 2021

**File number:** AD-21-312

## **Decision**

[1] Leave to appeal is refused.

## **Overview**

[2] The Applicant (Claimant) left his job working for a communications company and applied for EI benefits. The Respondent, the Canada Employment Insurance Commission (Commission), looked at the Claimant's reasons for leaving. It decided that he voluntarily left (or chose to quit) his job without just cause. The Commission refused to pay him benefits. The Claimant appealed to the General Division.

[3] The General Division found that the Claimant voluntarily left his job. It also found that he had other reasonable alternatives to quitting his job when he did. The General Division concluded that the Claimant voluntarily left his employment without just cause.

[4] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. He submits that the General Division did not consider the global pandemic and the directives and recommendations of the federal and provincial health authorities. He also questions the jurisdiction of the General Division to override these directives and recommendations.

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

[6] I refuse leave to appeal because the Claimant's appeal has no reasonable chance of success.

## **Issue**

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

## **ANALYSIS**

[8] Section 58(1) of the *Department of Employment and Social Development Act* specifies the only grounds of appeal of a General Division decision. These reviewable errors are that:

1. The General Division hearing process was not fair in some way.
2. The General Division did not decide an issue that it should have decided. Or, it decided something it did not have the power to decide.
3. The General Division based its decision on an important error of fact.
4. The General Division made an error of law when making its decision.

[9] 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 his case but must establish that the appeal has a reasonable chance of success based on a reviewable error.

[10] In other words, before I can grant leave, 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?**

[11] In support of his application for leave to appeal, the Claimant submits that the General Division did not consider the global pandemic and the directives and recommendations of the federal and provincial health authorities. He also questions the jurisdiction of the General Division to override these directives and recommendations.

[12] The General Division had to determine whether the Claimant had just cause to voluntarily leave his employment. This must be determined at the time he left.

[13] Whether one had just cause to voluntarily leave an employment depends on whether he had no reasonable alternative to leaving having regard to all the circumstances.

[14] The General Division found that the Claimant left his job.

[15] The Claimant stated before the General Division that he had no reasonable alternative because he wanted to reduce his exposure to COVID-19 given his age and his wife's health. He said that he should not be compelled to continue in a job that would require travel away from home. He stated this is especially the case when the government is strongly advising against travel.

[16] The General Division considered that the employer had been compliant with travel restrictions. It considered that the Claimant did not talk to his employer about his concerns and did not try to find and secure another job before quitting his job. The General Division concluded that the Claimant had other reasonable alternatives than to leave his job when he did.

[17] It is well established case law that a claimant who is dissatisfied with his working conditions must attempt to settle the issues with the employer and seek alternative employment prior to leaving. The Claimant did neither.

[18] I note that the Claimant mentioned during a first interview with the Commission that he would have still left his job notwithstanding COVID-19. He declared that the requirement to be out of town and away from home was the major factor.<sup>1</sup>

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<sup>1</sup> See GD3-24.

[19] The Claimant reiterated during a second interview with the Commission that the amount of travel the employer was planning to do was not sustainable for him and his family. He would not have been able to attend to needs at home, or make various appointments.<sup>2</sup>

[20] As stated by the General Division, the Claimant made a personal choice to end his employment, which perhaps was a good personal choice for him at that time. However, a good personal choice does not establish just cause for leaving employment under the law.<sup>3</sup>

[21] In his 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. He 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.

[22] 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 his request for leave to appeal, I find that the appeal has no reasonable chance of success.

## **CONCLUSION**

[23] Leave to appeal is refused.

Pierre Lafontaine  
Member, Appeal Division

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<sup>2</sup> See GD3-32.

<sup>3</sup> Section 29 of the *Employment Insurance Act*.