



[TRANSLATION]

Citation: *DR v Canada Employment Insurance Commission*, 2021 SST 781

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

# **Leave to Appeal Decision**

<b>Applicant:</b>	D. R.
<b>Representative:</b>	Ghyslaine Lebouthillier
<b>Respondent:</b>	Canada Employment Insurance Commission

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<b>Decision under appeal:</b>	General Division decision dated October 29, 2021 (GE-21-1809)
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<b>Tribunal member:</b>	Pierre Lafontaine
<b>Decision date:</b>	December 23, 2021
<b>File number:</b>	AD-21-415

## Decision

[1] Leave (permission) to appeal is refused. The appeal will not proceed.

## Overview

[2] The Applicant (Claimant) left her job at a daycare in Quebec. She explained that she had left her job to follow her partner, who wanted to settle in New Brunswick. The Respondent, the Canada Employment Insurance Commission (Commission), decided that the Claimant voluntarily left (or chose to quit) her job without just cause, so it was not able to pay her benefits. On reconsideration, the Commission upheld the initial decision. The Claimant appealed to the General Division.

[3] The General Division found that the Claimant had voluntarily left her job. It found that the decision to move to follow her partner was a personal choice, not an obligation. The General Division determined that, even if she made some efforts to find a job before her move, the Claimant did not have assurance of another job when she left the one she had. It decided that the Claimant did not have just cause for leaving her job when she did.

[4] The Claimant now seeks leave from the Appeal Division to appeal the General Division decision. She argues that the General Division failed to observe a principle of natural justice because she did not receive the appeal file or the Commission's arguments before the October 29, 2021, hearing. She also argues that the General Division member was biased because the decision was made a few hours after the hearing. Lastly, the Claimant argues that the General Division made an error in its interpretation of the law.

[5] I have to decide whether there is an arguable case that the General Division made a reviewable error based on which the appeal has a reasonable chance of success.

[6] I am refusing leave to appeal because the Claimant has not raised a ground of appeal based on which the appeal has a reasonable chance of success.

## Issue

[7] Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

## 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 the following:

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. It is an initial hurdle for the Claimant to meet, but it is lower than the one that must be met at the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove her case; she must instead establish that the appeal has a reasonable chance of success—in other words, that there is arguably a reviewable error based on which the appeal might succeed.

[10] I will grant leave to appeal if I am satisfied that at least one of the Claimant's stated grounds of appeal gives the appeal a reasonable chance of success.

## **Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?**

[11] In support of her application for leave to appeal, the Claimant argues that the General Division failed to observe a principle of natural justice because she did not

receive the appeal file or the Commission's arguments before the October 29, 2021, hearing.<sup>1</sup>

[12] I note that the Claimant named a representative on her appeal to the General Division form. The form indicates that the information about her appeal to the General Division will be communicated to the representative.

[13] On October 12, 2021, the appeal file and the Commission's arguments were sent to the Claimant's representative. The General Division hearing took place on October 29, 2021. At the General Division hearing, the Claimant's representative also confirmed having received the Commission's documents.

[14] This means that there was no breach of natural justice, since the Commission's documents were communicated to the Claimant's representative more than two weeks before the hearing.

[15] The Claimant also argues that she had just cause for leaving her job given the obligation to accompany her partner to another residence. Her partner wanted to retire in New Brunswick. The move was planned a year in advance. So, she left her job to continue her relationship in a safer place in terms of COVID-19 while sharing the lower cost of living in New Brunswick. The Claimant argues that she made efforts to find a job before and after her move. The Claimant argues that she had no reasonable alternative to leaving her job when she did.

[16] The General Division found that the decision to move to follow her partner was a personal choice, not an obligation. The General Division determined that, even if she made some efforts to find a job before her move, the Claimant did not have assurance of another job when she left the one she had. It decided that the Claimant did not have just cause for leaving her job when she did.

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<sup>1</sup> GD3 and GD4.

[17] The evidence shows that the Claimant moved because her partner wanted to retire in New Brunswick. The partner was not transferred or otherwise obligated to move to New Brunswick.

[18] The Claimant's decision to move to New Brunswick was strictly personal because she and her partner had decided to move to an area that suited their personal needs and financial situation.

[19] It is settled law that the Claimant's reasons for voluntarily leaving her job—moving for personal reasons—do not amount to just cause under the law.

[20] Concerning the obligation to follow her partner, the partner's decision to move cannot be based on purely personal reasons (retirement, going back home) but has to be related to a job or for other reasons that leave no other reasonable alternative.

[21] Lastly, the Claimant argues that the General Division member was biased because she made her decision a few hours after the hearing. She argues that the General Division member had already decided the issue before the hearing.

[22] I am of the view that the General Division decision is based on the evidence that was presented and on the applicable legislative provisions, as interpreted in the case law.

[23] I find that the Claimant has provided no evidence that the General Division member's conduct deviates from the standard. Given the seriousness of such an allegation, it cannot rest on mere suspicion, pure conjecture, insinuations, or mere impressions.<sup>2</sup>

[24] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for leave to appeal, I find that the appeal has no reasonable chance of success. The Claimant has not raised any issue that could justify setting

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<sup>2</sup> *Arthur v Canada (Attorney General)*, 2001 FCA 223.

aside the decision under review.

## **Conclusion**

[25] Leave to appeal is refused. The appeal will not proceed.

Pierre Lafontaine  
Member, Appeal Division