



[TRANSLATION]

Citation: *SG v Canada Employment Insurance Commission*, 2022 SST 101

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: S. G.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated
January 5, 2022 (GE-21-2387)

Tribunal member: Pierre Lafontaine

Decision date: March 1, 2022

File number: AD-22-25

Decision

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

Overview

[2] After being on sick leave, the Applicant (Claimant) left his job and applied for Employment Insurance benefits. The Canada Employment Insurance Commission (Commission) looked at the Claimant's reasons for leaving. It decided that he had voluntarily left (or had chosen to quit) his job without just cause, so it was not able to pay him benefits.

[3] The Claimant requested a reconsideration of this decision, but the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[4] The General Division found that the Claimant had voluntarily left his job because his employer did not want to let him go back to work gradually or change his status to become a part-time employee. The General Division found that he had reasonable alternatives to leaving, namely going back to work full-time or asking for extended sick leave. It decided that the Claimant had left his job without just cause.

[5] The Claimant seeks leave from the Appeal Division to appeal the General Division decision. He argues that his period of sick leave was refused. So, he was not entitled to a gradual return to work. He argues that his employer also refused to let him go back to work part-time. So, he could not be granted further sick leave.

[6] 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.

[7] 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

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

Analysis

[9] 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.

[10] 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 his case; he must instead establish that the appeal has a reasonable chance of success. In other words, he must show that there is arguably a reviewable error based on which the appeal might succeed.

[11] 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?

[12] The Claimant argues that his period of sick leave was refused. So, he was not entitled to a gradual return to work. He argues that his employer also refused to let him go back to work part-time. So, he could not be granted further sick leave.

[13] The evidence before the General Division shows that, after his sick leave, the Claimant had the option of going back to work full-time for his employer. Instead, the Claimant suggested a new schedule to his employer, who refused this new schedule. In light of the employer's refusal to let him go back to work gradually or to grant him part-time employee status, he decided to leave his job.

[14] The evidence clearly shows that the Claimant could have kept his job had it not been for his desire to go back to work gradually or to work part-time. His employer formally advised him that he had to go back to work full-time at the end of his sick leave. He chose to leave his job.

[15] As the General Division decided, a reasonable alternative would have been for the Claimant to go back to work until he found a new job that aligned with what he wanted instead of causing his unemployment.

[16] The Claimant made a personal choice to leave his job, which is not enough to establish just cause under the law.

[17] 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 aside the decision under review.

Conclusion

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

Pierre Lafontaine
Member, Appeal Division