



Citation: *AV v Canada Employment Insurance Commission*, 2022 SST 229

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

# **Leave to Appeal Decision**

**Applicant:** A. V.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated January 28, 2022  
(GE-21-2498)

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**Tribunal member:** Jude Samson

**Decision date:** April 7, 2022

**File number:** AD-22-133

## Decision

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

## Overview

[2] A. V. is the Claimant in this case. He quit a job to attend a two-month training course in his field. Around the same time, he also applied for Employment Insurance (EI) regular benefits.

[3] The Canada Employment Insurance Commission (Commission) denied his claim for benefits.<sup>1</sup> It said that he had quit a job without just cause and that he wasn't available for work during his studies.<sup>2</sup>

[4] The Claimant appealed the Commission's decision to the Tribunal's General Division but it dismissed his appeal.

[5] The Claimant now wants to appeal the General Division decision to the Tribunal's Appeal Division. However, he needs permission to appeal for the file to move forward.

[6] The Claimant is arguing that the General Division made errors when it found that he had quit his job without just cause. He also argues that he proved his availability for work because he was looking for jobs both during and after the end of his course.

[7] Unfortunately for the Claimant, I have decided that his appeal has no reasonable chance of success. I have no choice, then, but to refuse permission to appeal.

## Issue

[8] This decision focuses on one issue: Does the Claimant's appeal have a reasonable chance of success?

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<sup>1</sup> Service Canada delivers the EI program for the Commission.

<sup>2</sup> In this context, "just cause" has a very specific meaning. It is defined in section 29(c) of the *Employment Insurance Act* (EI Act). Section 30 of the EI Act says that a person who quits their job without just cause is disqualified from receiving EI benefits. And section 18 of the EI Act says (among other things) that a person must be available for work to qualify for EI benefits.

## Analysis

[9] Most Appeal Division files follow a two-step process. This appeal is at step one: permission to appeal.

[10] The legal test that the Claimant needs to meet at this step is a low one: Is there any arguable ground on which the appeal might succeed?<sup>3</sup> If the appeal has no reasonable chance of success, then I must refuse permission to appeal.<sup>4</sup>

[11] To decide this question, I focused on whether the General Division could have made a relevant error.<sup>5</sup>

### The appeal has no reasonable chance of success

- **There is no arguable case that the General Division made an error by finding that the Claimant didn't get a referral to take a course**

[12] The Claimant would have had an easier time qualifying for EI benefits if the Commission (or a designated authority) had referred him to his course.<sup>6</sup> In its decision, however, the General Division noted that that the parties agreed that the Claimant didn't get that type of referral.<sup>7</sup>

[13] Now the Claimant highlights how the school he attended invited him to take the course, so argues that he might have gotten a referral after all.

[14] The General Division has to make its decision based on the information it has in front of it. The General Division member asked the Claimant if he had been referred to his course.<sup>8</sup> The Claimant spoke about his school's invitation. The General Division

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<sup>3</sup> This legal test is described in cases like *Osaj v Canada (Attorney General)*, 2016 FC 115 at paragraph 12 and *Ingram v Canada (Attorney General)*, 2017 FC 259 at paragraph 16.

<sup>4</sup> This is the legal test described in section 58(2) of the *Department of Employment and Social Development Act* (DESD Act).

<sup>5</sup> The relevant errors, formally known as "grounds of appeal," are listed under section 58(1) of the DESD Act.

<sup>6</sup> See section 25 of the EI Act.

<sup>7</sup> See paragraph 15 of the General Division decision.

<sup>8</sup> The relevant part of the audio recording starts at approximately 6:10.

clarified by asking whether the Commission (or one of its designates) had referred the Claimant to his course. The Claimant answered no.

[15] In the circumstances, the Claimant's argument has no reasonable chance of success. There is no arguable case that the General Division made an error of fact when it found that there was an agreement that the Claimant didn't get a referral from the Commission or a designated authority to take a course.

– **There is no arguable case that the General Division made an error by finding that the Claimant left his job for personal reasons**

[16] The General Division found that the Claimant did not have just cause for quitting his job, even though he was leaving to attend a course that would further his career.<sup>9</sup> The General Division referred to one Federal Court of Appeal decision in support of its decision.<sup>10</sup> In fact, there are several court decisions on this issue and they all come to the same conclusion.

[17] While the Claimant disagrees with the General Division's conclusion, he has not attacked it in any meaningful way. Instead, he is repeating arguments he made at the General Division in hopes of getting a different result. But the Appeal Division has to identify an error before it can intervene in a case.

[18] Regardless of the Claimant's efforts to take a leave of absence, or the value of the course he was taking, the law focuses on the fact that the Claimant could have kept working with his previous employer. But he made the personal choice to quit.

[19] In the circumstances, there is no arguable case that the General Division made an error by finding that the Claimant left his job for personal reasons.

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<sup>9</sup> See paragraph 14 of the General Division decision.

<sup>10</sup> Specifically, it referred to *Canada (Attorney General) v Caron*, 2007 FCA 204.

– **The Claimant's concerns about the General Division's availability analysis do not give his appeal a reasonable chance of success**

[20] In its decision, the General Division concluded that, while he was in school, the Claimant set personal conditions that unduly limited his chances of returning to the labour market.

[21] The Claimant's evidence made clear that his course was very demanding and that he would have had very little time to work while studying. However, he also said that he would have quit his course if he had been offered a suitable job in his field.

[22] I understand the Claimant's concern about this part of the General Division's analysis. However, the General Division's conclusion about the Claimant's availability for two months from August to October 2021 has little or no impact on the outcome of his case.

[23] The bigger challenge the Claimant faces is the disqualification that the law imposes against him for leaving a job without just cause. The disqualification took effect on August 28, 2021. And it meant that he could not use any of the insurable hours that he had accumulated with his previous employer to establish a claim for EI benefits.

[24] In other words, the Claimant would not qualify for EI benefits, even if I found that he had been available for work during his two-month course.

[25] Aside from the Claimant's arguments, I have reviewed the file and examined the General Division decision.<sup>11</sup> The General Division summarized the law and used evidence to support its decision. I did not find evidence that the General Division might have ignored or misinterpreted.

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<sup>11</sup> The Federal Court has said that I must do this in decisions like *Griffin v Canada (Attorney General)*, 2016 FC 874 and *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

## **Conclusion**

[26] I have concluded that the Claimant's appeal has no reasonable chance of success. I have no choice, then, but to refuse permission to appeal. This means that the appeal will not proceed.

Jude Samson  
Member, Appeal Division