



Citation: *AA v Canada Employment Insurance Commission*, 2022 SST 211

**Social Security Tribunal of Canada
Appeal Division**

Leave to Appeal Decision

Applicant: A. A.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated January 24, 2022
(GE-21-2485)

Tribunal member: Jude Samson

Decision date: April 1, 2022

File number: AD-22-87 and AD-22-88

Decision

[1] I am refusing leave (permission) to appeal. The appeal will not proceed.

Overview

[2] A. A. is the Claimant in this case. One of her co-workers got sick with COVID-19. She was afraid of getting it too and of bringing it home to her family. So, she quit her job at a grocery store. Then, the Claimant applied for Employment Insurance (EI) regular benefits, and the Canada Employment Insurance Commission approved her application.¹

[3] Many months later, the Commission reviewed the Claimant's file and decided that she didn't qualify for the EI benefits that she had received. Specifically, the Commission decided that the Claimant:

- quit her job without just cause;² and
- failed to prove that she was available for work.³

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

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

[6] The Claimant argues that the General Division ignored one of the reasons why she quit her job, along with important documents that she had provided.

¹ Service Canada delivers the EI program for the Commission.

² 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.

³ This requirement is described in section 18(1)(a) of the EI Act.

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

Preliminary issue: new evidence

[8] I am not considering the Claimant's new evidence.

[9] The Claimant's application to the Appeal Division includes a letter from her doctor.⁴ This is new evidence because the General Division didn't have this letter when it made its decision.

[10] The law doesn't allow me to take a fresh look at the case and come to my own conclusions based on new and updated evidence.⁵ Instead, my focus is on whether the General Division made a relevant error based on the information it had in front of it. I can't fault the General Division for overlooking information that it didn't have.

[11] There are exceptions to the general rule against considering new evidence.⁶ For example, I can consider new evidence that provides general background information only, highlights findings that the General Division made without supporting evidence, or reveals ways in which the General Division acted unfairly.

[12] None of those exceptions applies here. Instead, the Claimant's new evidence responds to comments the General Division made in its decision.⁷

⁴ This letter is on page AD1-9.

⁵ The Appeal Division's role is mostly defined by sections 58 and 59 of the *Department of Employment and Social Development Act* (DESD Act). For example, section 59(1) limits the Appeal Division's powers to giving the decision the General Division should have given.

⁶ Although the context is somewhat different, the Appeal Division normally applies the exceptions to considering new evidence that the Federal Court of Appeal listed in *Sharma v Canada (Attorney General)*, 2018 FCA 48 at para 8 and that the Federal Court listed in *Greeley v Canada (Attorney General)*, 2019 FC 1493 at para 28.

⁷ For example, see paragraphs 36 and 47 of the General Division decision.

Issues

[13] This decision focuses on two issues:

- a) Could the General Division have ignored important documents?
- b) Could the General Division have ignored one of the reasons why the Claimant quit her job?

Analysis

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

[15] 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?⁸ If the appeal has no reasonable chance of success, then I must refuse permission to appeal.⁹

It's clear that the General Division didn't ignore important documents

[16] The Claimant argues that the General Division overlooked important documents in her case.¹⁰ However, she didn't specify which documents the General Division might have ignored.

[17] I can assume that the General Division considered all the evidence, even if it didn't mention every piece of it.¹¹ However, I recognize that the General Division might make an error if it fails to mention important pieces of evidence or if it ignores significant contradictions in the evidence.¹²

⁸ This legal test is described in cases like *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12 and *Ingram v Canada (Attorney General)*, 2017 FC 259 at para 16.

⁹ This is the legal test described in section 58(2) of the DESD Act.

¹⁰ The reasons for the Claimant's appeal are on page AD1-4.

¹¹ See paragraph 10 of the Federal Court of Appeal's decision in *Simpson v Canada (Attorney General)*, 2012 FCA 82.

¹² See decisions like *Lee Villeneuve v Canada (Attorney General)*, 2013 FC 498 at paragraph 51, *Canada (Minister of Human Resources Development) v Quesnelle*, 2003 FCA 92 at paragraphs 7–9, and *Oberde Bellefleur v Canada (Attorney General)*, 2008 FCA 13 at paragraphs 3 and 7.

[18] I reviewed the Claimant's appeal file but did not find important documents the General Division might have overlooked. Similarly, I did not find important contradictions that the General Division might have ignored.

[19] As a result, this argument has no reasonable chance of success.

It's clear that the General Division didn't ignore reasons why the Claimant quit her job

[20] Part of the General Division's job was to decide whether the Claimant had just cause for leaving her job when she did. Proving just cause can be difficult. Applicants have to establish that, in all the circumstances of their case, they had no reasonable alternative but to quit.¹³

[21] In this case, the Claimant argued that she had just cause for quitting her job because she feared getting COVID-19 and then bringing it home to her family. In particular, the Claimant's mother was especially vulnerable to the disease.

[22] The General Division clearly considered the Claimant's explanation.¹⁴ However, the Claimant argues that the General Division only considered one section of the law—working conditions that constitute a danger to health or safety—while it should also have considered the Claimant's need to care for her mother.¹⁵

[23] The Claimant worked for many months during the COVID-19 pandemic. There's no evidence saying that the Claimant's mother had COVID-19 or otherwise needed more care at the time the Claimant left her job. So, it's hard to see why the General Division would have considered the section of the law about caring for a family member. Similarly, it's hard to see how recharacterizing the Claimant's reasons for quitting change the reasonable alternatives that the General Division discussed.

[24] Again, this argument has no reasonable chance of success.

¹³ See paragraph 3 of the Federal Court of Appeal's decision in *Canada (Attorney General) v White*, 2011 FCA 190.

¹⁴ See paragraphs 32 to 53 of the General Division decision.

¹⁵ See sections 29(c)(iv) and 29(c)(v) of the EI Act.

[25] Aside from the Claimant's arguments, I also reviewed the file and examined the General Division decision.¹⁶

[26] In short, the General Division set out the correct legal test and identified reasonable alternatives that the Claimant could have pursued instead of quitting her job.

[27] The evidence supports the General Division's decision. And I did not find evidence that the General Division might have ignored or misinterpreted.

[28] Overall, the Claimant is repeating many of the same arguments that she made at the General Division. She seems to be hoping that I will reassess her case and come to the opposite conclusion. But that is not something that I can do, and it is not a reason for granting permission to appeal.¹⁷

Conclusion

[29] I have decided 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

¹⁶ 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.

¹⁷ *Bellefeuille v Canada (Attorney General)*, 2014 FC 963 at para 31.