



[TRANSLATION]

Citation: *PD v Canada Employment Insurance Commission*, 2022 SST 450

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

# **Leave to Appeal Decision**

**Applicant:** P. D.

**Respondent:** Canada Employment Insurance Commission

---

**Decision under appeal:** General Division decision dated  
March 25, 2022 (GE-22-526)

---

**Tribunal member:** Pierre Lafontaine

**Decision date:** May 31, 2022

**File number:** AD-22-234

## **Decision**

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

## **Overview**

[2] The Applicant (Claimant) worked as a coordinator for a non-profit organization. She reported to the board members.

[3] The Claimant had difficulties with her employee. She felt that he was not competent to do his job. She recommended that the board members dismiss him. After several weeks and some discussion, the members refused to follow her recommendation.

[4] Given the situation, she resigned. She applied for Employment Insurance benefits. The Commission denied her benefits because she had voluntarily left her job and she had reasonable alternatives to leaving when she did.

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

[6] The General Division found that the Claimant had chosen to leave her job. It found that the Claimant could have stayed in her job and proven that the employee was incompetent and needed to be dismissed. In addition, the General Division found that the Claimant also could have looked for another job before leaving the one she had given that the situation was not that unbearable.

[7] The Claimant seeks leave from the Appeal Division to appeal the General Division decision. She argues that the General Division made errors of fact and law when it found that she did not have just cause for leaving her job.

[8] 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

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

## Analysis

[10] 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.

[11] 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, she must show that there is arguably a reviewable error based on which the appeal might succeed.

[12] 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?**

[13] I have to decide the application for leave to appeal based on the evidence that was before the General Division.

[14] The Claimant argues that the relationship of trust with her employer was broken. She argues that the board was perfectly aware of the employee's incompetence and ignored the additional work and worries she had to deal with because of his incompetence. She says that being able to get things done in such a work environment was becoming a monumental challenge that could have led to burnout. The Claimant argues that the consequences of the board's decisions and the lack of support and communication made the job unbearable and that, in the circumstances, she had just cause for leaving her job.

[15] The issue before the General Division was whether the Claimant had voluntarily left her job without just cause.<sup>1</sup> This needs to be determined based on the circumstances that existed when the Claimant left.

[16] On August 3, 2021, the Claimant resigned and gave her employer 47 days' notice. She was in complete disagreement with the board, which did not wish to implement her recommendation to dismiss the employee.

[17] The General Division found that the Claimant had a choice to stay or to leave following the board members' decision not to follow her recommendation right away. It found that the board had had no plans to dismiss the Claimant. The General Division decided that the Claimant had voluntarily left her job.

[18] The General Division also found that the Claimant had reasonable alternatives to leaving when she did. It found that the Claimant could have stayed in her job and monitored the employee more closely. In addition, the General Division found that the Claimant also could have looked for another job before leaving the one she had given that the situation was not that unbearable, as confirmed by the 47 days' notice given to the employer.

---

<sup>1</sup> In accordance with sections 29 and 30 of the *Employment Insurance Act*.

[19] The General Division also found that the Claimant had not said that the situation might affect her health before her notice of appeal. I note that, before she left, the Claimant did not see a doctor to discuss leaving or possibly going off work for burnout.<sup>2</sup>

[20] I understand that the Claimant initially told the Commission that she would have agreed to have the employee come back to work and would have respected the board's decision if the board had met with her and answered her calls concerning her recommendation instead of ignoring her. However, as the General Division pointed out, it is ultimately up to the board to decide whether to keep the employee on.

[21] The General Division concluded from the evidence that the Claimant did not have just cause for leaving her job under the law.

[22] In my view, the General Division correctly stated the legal test for voluntary leaving. It applied this test to the facts of the case and looked at whether, after considering all of the circumstances, the Claimant had no reasonable alternative to leaving her job.

[23] Unfortunately for the Claimant, an appeal to the Appeal Division is not an opportunity to resubmit your evidence and hope for a different outcome. I find that the Claimant has not raised any question of fact, law, or jurisdiction concerning her voluntary leaving that could justify setting aside the decision under review.

[24] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for leave to appeal, I have no choice but to find that the appeal has no reasonable chance of success.

---

<sup>2</sup> See GD3-25.

## **Conclusion**

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

Pierre Lafontaine  
Member, Appeal Division