



Citation: *TD v Canada Employment Insurance Commission*, 2022 SST 440

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: T. D.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated March 23, 2022
(GE-21-1067)

Tribunal member: Pierre Lafontaine

Decision date: May 31, 2022

File number: AD-22-208

Decision

[1] Leave to appeal is refused. This means the appeal will not proceed.

Overview

[2] The Applicant (Claimant) left his job on February 18, 2021, and applied for Employment Insurance (EI) benefits. The Canada Employment Insurance Commission (Commission) looked at the Claimant's reasons for leaving. It decided that he voluntarily left (or chose to quit) his job without just cause, so it was not able to pay him benefits.

[3] Upon reconsideration, the Commission maintained its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[4] The General Division found that the Claimant voluntarily left his job. It found that the Claimant's working conditions were not so intolerable that he had no choice but to leave. The General Division found that he had other reasonable alternatives than to leave his job, namely talking to one of his supervisors, looking for another job or waiting for an answer from the Union's head office. It concluded that the Claimant did not have just cause to leave his job under the law.

[5] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. He puts forward that he left his job because he was wrongfully accused of stealing time by a supervisor, which he found to be incredibly insulting. The Claimant puts forward that he had no reasonable alternative to leaving at that time because he could not be expected to continue working in that environment. He submits that he had just cause to leave his job.

[6] I must decide whether there is some reviewable error of the General Division upon which the appeal might succeed.

[7] I am refusing leave to appeal because the Claimant's appeal has no reasonable chance of success.

Issue

[8] Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

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 that:

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 on the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove his case but must establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, that there is arguably some reviewable error upon which the appeal might succeed.

[11] Therefore, before I can grant leave, I need to be satisfied that the reasons for appeal fall within any of the above-mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success.

Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

[12] In support of his application for leave to appeal, the Claimant submits that he left his job because he was wrongfully accused of stealing time by a supervisor who had previously laughed at him, which he found to be incredibly insulting. The Claimant puts forward that he had no reasonable alternative to leaving at that time because he could not be expected to continue working in that environment. He submits that he had just cause to leave his job.

[13] The General Division had to determine whether the Claimant had just cause to voluntarily leave his employment. This must be determined at the time he left.

[14] Whether one had just cause to voluntarily leave an employment depends on whether he had no reasonable alternative to leaving having regard to all the circumstances.

[15] The General Division found that the undisputed evidence demonstrated that the Claimant quit his job.¹

[16] Furthermore, the General Division found that the Claimant had other reasonable alternatives than to leave his job, namely clarifying the rules with his employer regarding break periods, talking about the issues he had with the other supervisor he respected or waiting for an answer from the Union's head office.

[17] The General Division also found that another reasonable alternative would have been for the Claimant to continue working while looking for another job considering that the working conditions were not so intolerable. The evidence shows that the Claimant did not fulfill his obligation to look for work prior to leaving.²

¹ See GD3-29.

² See GD3-17.

[18] The General Division concluded that the Claimant did not have just cause to leave his job under the law.

[19] Unfortunately, for the Claimant, an appeal to the Appeal Division is not a new hearing where he can submit his evidence again and hope for a favourable decision.

[20] In his application for leave to appeal, the Claimant has not identified any reviewable errors such as jurisdiction or any failure by the General Division to observe a principle of natural justice. He has not identified errors in law nor identified any erroneous findings of fact, which the General Division may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision.

[21] For the above-mentioned reasons and after reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Claimant in support of his request for leave to appeal, I find that the appeal has no reasonable chance of success.

Conclusion

[22] Leave to appeal is refused. This means the appeal will not proceed.

Pierre Lafontaine
Member, Appeal Division