



Citation: *CF v Canada Employment Insurance Commission*, 2022 SST 442

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: C .F.
Representative: R. F.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated March 23, 2022
(GE-22-378)

Tribunal member: Janet Lew

Decision date: May 31, 2022
File number: AD-22-214

Decision

[1] Leave (permission) to appeal is refused because the appeal does not have a reasonable chance of success. The appeal will not be going ahead.

Overview

[2] The Applicant, C. R. (Claimant), is appealing the General Division decision. The General Division found that the Claimant did not have just cause for leaving his job when he did. He left his work to attend school. The Respondent, the Canada Employment Insurance Commission (Commission), had not referred him to a school program. The General Division also found that the Claimant had reasonable alternatives to leaving his employment. As a result, the Claimant was disqualified from receiving Employment Insurance benefits.

[3] The Claimant argues that the General Division made an important factual error when it decided that he did not have just cause for having left his employment.

[4] Before the Claimant can move ahead with his appeal, I have to decide whether the appeal has a reasonable chance of success.¹ Having a reasonable chance of success is the same thing as having an arguable case.² If the appeal does not have a reasonable chance of success, this ends the matter.

[5] I am not satisfied that the appeal has a reasonable chance of success. Therefore, I am not giving permission to the Claimant to move ahead with his appeal.

Issue

[6] Is there an arguable case that the General Division made a factual error about whether the Claimant voluntarily left his employment?

¹ Under section 58(1) of the *Department of Employment and Social Development Act* (DESD Act), I am required to refuse permission if am satisfied, "that the appeal has no reasonable chance of success."

² See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

Analysis

[7] The Appeal Division must grant permission to appeal unless the appeal has no reasonable chance of success. A reasonable chance of success exists if there is a possible jurisdictional, procedural, legal, or certain type of factual error.³

[8] Once an applicant gets permission from the Appeal Division, they move to the actual appeal. There, the Appeal Division decides whether the General Division made an error. If it decides that the General Division made an error, then it decides how to fix that error.

Is there an arguable case that the General Division made a factual error about whether the Claimant voluntarily left his employment?

[9] The Claimant argues that the General Division made a factual error about whether he voluntarily left his employment. He explains that his employer hired him, knowing that he would be attending school in the fall. His employer laid him off so that he could return to school.⁴

[10] The evidence that was before the General Division showed that the Claimant voluntarily left his employment. Nothing in the hearing file suggests that his employer laid him off from his employment. In fact, the Claimant told the Commission that his employer had more work available for him.⁵

[11] Even if the Claimant's employer had laid him off from his employment, there is a general presumption that a full-time student is unavailable for work. The Claimant would have had to prove his availability for work.

[12] But, as the General Division noted, if a claimant is attending a course or training to which the Commission or a designated authority has referred them, they would be

³ See section 58(1) of the DESD Act. For factual errors, the General Division had to have based its decision on an error that was made in a perverse or capricious manner, or without regard for the evidence before it.

⁴ See Claimant's email dated April 28, 2022, at AD2.

⁵ See Supplementary Record of Claim dated November 10, 2021, at GD3-18.

considered unemployed, capable of, and available for work. However, a claimant has to secure referral to the program or training before actually starting the training.

[13] In short, leaving work to return to school or to take a training course is not just cause, unless the Commission authorizes the training. The Claimant does not challenge the fact that he did not get a referral to his training program before starting it.

[14] I have also reviewed the underlying record to ensure that that the General Division did not misconstrue, mischaracterize, or overlook any important evidence. The General Division's findings are consistent with the evidence. I also do not see any errors of law, either on the face of the record or otherwise.

[15] I am not satisfied that the appeal has a reasonable chance of success. The evidence supports the General Division's findings that the Claimant left his employment to attend a training program without getting a referral beforehand.

Conclusion

[16] The Claimant does not have an arguable case. Permission to appeal is refused. This means that the appeal will not go ahead.

Janet Lew
Member, Appeal Division