Citation: *LS v Canada Employment Insurance Commission*, 2022 SST 540

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	L. S.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated March 9, 2022 (GE-22-301)

Tribunal member:	Charlotte McQuade
Decision date:	June 20, 2022
File number:	AD-22-238

Decision

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

Overview

[2] L. S. is the Claimant. He quit his job on September 4, 2021, to go to school. He then applied for Employment Insurance (EI) regular benefits. He also applied to the NB-EI Connect program for a referral to attend approved training. He was approved by NB-EI Connect on September 26, 2021. The Canada Employment Insurance Commission (Commission) decided that since the Claimant did not have a referral from the Commission or an approved authority to attend school, prior to quitting, he did not have just cause for quitting.

[3] The Claimant appealed the Commission's decision to the Tribunal's General Division. He argued the NB-EI Connect program had told him that before he could apply for a referral, he had to have applied for EI benefits, which he could only do after he quit. The General Division decided that the Claimant did not have just cause for quitting his job.

[4] 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. The Claimant argues that the General Division made an important error of fact and an error of law when it decided that he had quit his job without just cause.

[5] I am satisfied that the Claimant's appeal has no reasonable chance of success so I am refusing permission to appeal.

Issues

[6] The Claimant is raising two issues:

a) Is it arguable that the General Division made an important error of fact about when the Claimant could obtain a referral for training?

b) Is it arguable that the General Division misapplied the law when it decided the Claimant did not have just cause for leaving his employment?

Analysis

[7] The Appeal Division has a two-step process. First, the Claimant needs permission to appeal. If permission is denied, the appeal stops there. If permission is given, the appeal moves on to step two. The second step is where the merits of the appeal are decided.

[8] I must refuse permission to appeal if I am satisfied that the appeal has no reasonable chance of success.[1] The law says that I can only consider certain types of errors.[2] A reasonable chance of success means there is an arguable case that the General Division may have made at least one of those errors.[3]

[9] This is a low bar. Meeting the test for leave to be granted does not mean the appeal will necessarily succeed.

It is not arguable that the General Division made an important error of fact

[10] It is not arguable that the General Division made an important error of fact about when the Claimant could obtain referred training from the NB-EI Connect program.

[11] The Claimant argues that the General Division relied on an incorrect assessment from Service Canada that he could have kept working and obtained referred training prior to leaving. He says he pursued the referral as far as he could prior to being accepted for admission in the program and becoming unemployed.

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[1] Section 58(2) of the *Department of Employment and Social Development Act* (DESD Act) says this is the test I have to apply.
[2] Section 58(1) of the DESD Act describes the only errors that I can consider when deciding whether to give permission to proceed with an appeal. These errors are that the General Division breached natural justice, made an error of jurisdiction, made an error of law or based its decision on an important error of fact.
[3] See *Osaj v Canada (Attorney General)*, 2016 FC 115, which describes what a "reasonable chance of success" means.

[12] The General Division was aware of the fact that the Claimant could not receive the referral from NB-EI Connect until after he had quit his job and applied for EI benefits.

[13] The General Division specifically referred to the evidence provided by the Claimant's representative that it would not have been possible for the Claimant to be referred to his training through NB-EI Connect before he left his job. The General Division also referred to the copy of the application form for the NB-EI Connect program, which stated that, an "NB-EI Connect Program Application can only be submitted after you have an active EI claim or have applied for EI through Service Canada."[4]

[14] The General Division concluded that the Claimant could not have applied for this program, and therefore been referred to his training, before he stopped working and applied for EI.[5]

[15] The General Division clearly understood that the Claimant could not obtain a referral from NB-EI Connect prior to quitting his job and applying for EI benefits.

[16] In addition to the Claimant's argument, I have reviewed the entire record and listened to the recording of the hearing. I am satisfied that the General Division did not misunderstand or ignore any evidence that could have an impact on the outcome of this appeal.[6]

[17] It is not arguable, therefore, that the General Division based its decision on an important mistake about the facts.

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[4] See paragraph 24 of the General Division decision.
[5] See paragraph 24 and paragraph 30 of the General Division decision.
[6] The Federal Court's decision in *Karadeolian v Canada (Attorney General)*, 2016 FC 615 says that this kind of review should be done when deciding whether to refuse leave to appeal.

It is not arguable that the General Division misapplied the law concerning just cause

[18] It is not arguable that the General Division misapplied the law when it decided the Claimant did not have just cause for leaving his job.

[19] The Claimant argues that the General Division misapplied the test for just cause and the case law, believing that it was possible for the Claimant to obtain a formal referral by NB-EI Connect, prior to leaving his employment. He maintains that the General Division imposed too high of a burden on him to provide training approval that could not be obtained while employed. The Claimant maintains he took the process as far as was possible while still employed.

[20] The law says that a claimant is disqualified from receiving benefits if the claimant voluntarily left their job without just cause.[7]

[21] "Just cause" exists if a claimant had no reasonable alternative to leaving, having regard to all the circumstances, including any of the circumstances set out in the law.[8]

[22] So, the General Division had to decide what the circumstances were in which the Claimant quit his job and whether, having regard to those circumstances, the Claimant had no reasonable alternatives to quitting his job.

[23] The General Division decided that the circumstances in which the Claimant left his job was that he was starting a full-time school program. He couldn't continue working with his school obligations and the lengthy commute to his school.

[24] The General Division found as a fact that, while the Claimant had researched the NB-EI Connect program prior to quitting, he had not obtained a referral from NB-EI Connect before quitting, so having a referral to attend training was not a circumstance of the Claimant's leaving.[9]

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[7] Section 30 of the *Employment Insurance Act* (EI Act) sets out this rule.
[8] Section 29(c) of the EI Act describes the test for "just cause."
[9] See paragraph 23 and paragraphs 29 to 30 of the General Division decision.

[25] This finding of fact was consistent with the evidence. The Claimant's evidence was that he gave his notice on September 2, 2021, to leave his job on September 4, 2021. He applied for EI benefits on September 10, 2021. He applied for the NB-EI Connect program after that. He received approval from NB-EI Connect on September 26, 2021. The Claimant provided documentary evidence confirming the date of referral.[10]

[26] My review of the audio recording from the hearing and the record does not reveal any evidence that, prior to quitting, the Claimant had received any kind of verbal referral or assurance of approval from NB-EI Connect to attend his schooling. Rather, the evidence is consistent with the General Division's finding of fact that the Claimant had only researched the NB-EI Connect program prior to quitting.

[27] In that regard, the Claimant's testimony was that he had called NB-EI Connect in the summer before quitting to see if he was going to be eligible for that program. He understood he had to be accepted into school and was not eligible until he was on EI. The member asked the Claimant if he was assured he would be approved or if he was just getting information about the program. He said, "it was just to see if he was going to be able to get it."[11]

[28] The General Division concluded that the Claimant did not have just cause for quitting his job. The General Division decided that, having regard to the circumstances in which the Claimant quit his job, which was a personal choice to return to school, the Claimant had the reasonable alternative of staying employed.

[29] In reaching this conclusion, the General Division relied on case law from the Federal Court of Appeal that says if you quit your job just to go to school without a referral for schooling from a Commission approved authority, you don't have just cause for leaving your job.[12]

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[10] See GD3-28.
[11] I heard this on the audio tape from the General Division hearing at approximately 0:31:50 to 0:34:00.
[12] The General Division relied on the case of *Canada (Attorney General) v Caron*, 2007 FCA 204.

[30] The Claimant filed a case with the General Division made by a different member of the General Division. He asked the General Division to follow this case. He argued his circumstances were the same as the student in that case and in that case, the General Division member had decided that the student had just cause to quit to attend school.[13]

[31] The General Division decided that case was distinguishable from the Claimant's situation because, despite the similarities between the Claimant's situation and the student in that case, the important difference was that the student in that case had a referral from a Commission approved authority, prior to quitting.[14]

[32] The General Division did not misapply the test for just cause. The Federal Court of Appeal has made clear that except for programs, authorized by the Commission or an approved authority, a return to school does not amount to just cause.[15]

[33] The law says that only the circumstances that existed at the time a claimant quits can be considered.[16] So, even though the Claimant subsequently received approval from NB-EI Connect, that fact could not be considered a circumstance of leaving.

[34] Since the Claimant did not have a referral to a program authorized by the Commission or an approved authority, before quitting, the General Division had no choice but to conclude that the Claimant did not have just cause for quitting his job.

[35] The General Division is not bound by other Tribunal decisions. In any event, the General Division did not err in law by distinguishing the case the Claimant provided. Unlike the Claimant, the student in that case had received a referral for training before quitting. As the law makes clear, having a confirmed referral prior to quitting is critical to the determination of whether there is just cause.

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[13] See GD2-14. This is an unreported case from the Tribunal's General Division.
[14] See paragraph 28 of the General Division decision.
[15] See *Canada (Attorney General) v Lamonde*, 2006 FCA 44; *Canada (Attorney General) v Lessard*, 2002 FCA 469; *Canada (Attorney General) v Beaulieu*, 2008 FCA 133.
[16] See *Canada (Attorney General) v Lamonde*, 2006 FCA 44.

[36] The General Division followed settled law in making the decision it did. Although the Claimant may have anticipated getting a referral and he ultimately did get a referral, in order to establish just cause, the law requires that the Claimant have the referral prior to quitting. The General Division was required to apply the law, not the requirements of the NB-EI Connect program.

[37] I have also considered other grounds of appeal. The Claimant has not argued that there was any error of jurisdiction or there was any procedural unfairness on the part of the General Division and I have not identified any such errors.

[38] The Claimant's appeal has no reasonable chance of success.

Conclusion

[39] I am refusing permission to appeal. This means that the appeal will not proceed.

Charlotte McQuade
Member, Appeal Division