Citation: *AM v Canada Employment Insurance Commission*, 2022 SST 565

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	A. M.
Representative:	A. B.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated April 6, 2022 (GE-22-546)

Tribunal member:	Charlotte McQuade
Decision date:	June 28, 2022
File number:	AD-22-314

Decision

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

Overview

[2] A. M. is the Claimant. After leaving his job, the Claimant applied for Employment Insurance (EI) regular benefits. He also applied to the NB-EI Connect program for a referral to attend approved training. 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 training, prior to quitting, he did not have just cause for quitting. So, he could not be paid benefits.

[3] The Claimant appealed the Commission's decision to the Tribunal's General Division but the General Division dismissed his appeal.

[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 about when he quit his job and when he was approved for the NB-EI Connect program.

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

Issue

[6] The Claimant is raising one issue: Is it arguable that the General Division based its decision on an important error of fact about when he quit his job or when he received his referral from NB-EI Connect to attend approved training?

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 based its decision on an important error of fact

[10] The General Division decided the Claimant was disqualified from benefits because he voluntarily left his employment without just cause. It is not arguable that the General Division based this decision on an error of fact about when the Claimant quit or an error of fact about when he received his referral from NB-EI Connect.

[11] The General Division found as a fact that the Claimant quit his job on August 27, 2021.[4] It also found as a fact that he received his referral from NB-EI Connect to attend training on September 17, 2021.[5]

[12] The Claimant submits that the General Division made errors in fact. He submits he was intending to continue working part-time. However, he was told he would be

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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.
[4] See paragraph 12 of the General Division decision.
[5] See paragraph 33 of the General Division decision.

eligible for NB-EI Connect on August 30, 2021. He submits that it was only after that, that he asked his employer for a Record of Employment (ROE).[6]

[13] For the Appeal Division to intervene on an error of fact, the General Division must have based its decision on the error of fact. In addition, the General Division must have made that error of fact in a perverse or capricious manner or without regard to the material before it.[7]

[14] There was no dispute before the General Division that the Claimant had voluntarily quit his job. There was conflicting information on file about the date he quit.

[15] The Claimant reported in his application for EI benefits that he quit his job and his last day of work was August 27, 2021.[8] However, his employer noted on the record of employment (ROE) that the Claimant quit to return to school and his last day paid was September 9, 2021.[9]

[16] The General Division found as a fact that the Claimant quit on August 27, 2021.

[17] The Claimant did not attend the hearing. The Claimant's representative attended and provided sworn testimony.

[18] The General Division referred in its decision to the date in the application for benefits and the different date on the ROE.[10] The General Division member also referred to the testimony from the Claimant's representative who confirmed that the Claimant's last day of work was August 27, 2021, and that was when he had separated from his employment. The General Division decision notes the representative testified that the September 9, 2021, date on the ROE may have reflected the Claimant's remaining vacation time.[11]

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[6] See AD1-4.
[7] See section 58(1)(c) of the DESD Act.
[8] See GD3-6 and GD3-7.
[9] See GD3-19.
[10] See paragraph 10 of the General Division decision.
[11] See paragraph 11 of the General Division decision.

[19] After reviewing the evidence, the General Division concluded the date of quit was August 27, 2021. The General Division preferred the Claimant's statement on the application for benefits and his representative's confirmation of his separation date of August 27, 2021, to the September 9, 2021, date in the ROE as it found that information was more reliable than the ROE. The General Division said this was because the employer did not explain why it said the last day was September 9, 2021, and there was no other evidence to support that the Claimant worked until September 9, 2021. Also, the Claimant himself contradicted this information.[12]

[20] The General Division also found as a fact that the Claimant had received the referral from NB-EI Connect to attend training on September 17, 2021.

[21] The General Division concluded this based on the Claimant's representative's testimony. The representative testified that the Claimant had first applied to a Training and Skills Development program in mid-August 2021. On August 30, 2021, the Claimant was notified that he wasn't qualified for this program but he might qualify for a different program, NB-EI Connect. He contacted an agent for NB-EI Connect the same day. The Claimant's representative testified that the agent told the Claimant that he had to apply for EI benefits before he applied for NB-EI Connect. Once he was approved for the program, he could leave his job and he would start receiving EI benefits. The Claimant's representative testified that the Claimant applied for the NB-EI Connect program immediately and was approved by NB-EI Connect on September 17, 2021.[13]

[22] It is not arguable that the General Division made an error of fact about the date the Claimant quit or the date he received a referral from the NB-EI Connect program.

[23] I have reviewed the audio tape from the General Division hearing and the record. The General Division's findings of fact about the date the Claimant quit and the date he received the referral from NB-EI Connect are consistent with the evidence on file.

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[12] See paragraph 12 of the General Division decision.
[13] See paragraph 20 and paragraph 21 of the General Division decision.

[24] The audio tape confirms that the Claimant's representative testified that the Claimant quit his job on August 27, 2021.[14] The representative also testified that the Claimant first spoke to NB-EI Connect on August 30, 2021, and applied for NB-EI Connect that day. On September 17, 2021, the Claimant received an email from NB-EI Connect saying his application had been received, processed and approved.[15]

[25] The Claimant is now submitting different information than his representative provided at the hearing about when he left his job and what he was told by NB-EI Connect on August 30, 2021. This is new evidence.

[26] I can't consider the Claimant's new evidence.[16] An appeal to the Appeal Division is not an opportunity for the Claimant to argue his case with new or different evidence and ask for a different outcome. Rather, the Appeal Division's role is to look for certain types of mistakes that the General Division may have made, on the evidence it had.

[27] The General Division analyzed the evidence in a meaningful way. The General Division addressed the differing evidence about the date the Claimant quit and gave reasons why it decided that date was August 27, 2021. The General Division is entitled to weigh the evidence before it and make findings of fact.

[28] The General Division was also entitled to accept the Claimant's representative's sworn and uncontradicted evidence about when he received the referral from NB-EI Connect.

[29] I am satisfied from my review of the audio recording and the record that the General Division did not ignore or misconstrue any evidence about when the Claimant quit or when he received the referral from NB-EI Connect to attend his training.

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[14] This is what I heard from the audio tape of the General Division hearing at approximately 00:31:45.
[15] This is what I heard from the audio tape of the General Division hearing at approximately 00:19:22 and 00:29:10.
[16] The Federal Court of Appeal has said, in *Shamra v Canada (AG)*, 2018 FCA 48, that, on judicial review, the only exceptions where the Court can accept new evidence is where the new evidence provides general background information only, or highlights findings that the Tribunal made without supporting evidence, or reveals ways in which the Tribunal acted unfairly. Given that the Appeal Division's role is to review errors the General Division may have made, I think the same reasoning applies to new evidence at the Appeal Division. None of the exceptions applies in the Claimant's case.

[30] It is not arguable, therefore, that the General Division made an error of fact about the date the Claimant quit or the date he received his referral from NB-EI Connect.

It is not arguable that the General Division made any other reviewable errors

[31] It is not arguable that the General Division made an error of law, breached procedural fairness or made an error of jurisdiction.

– It is not arguable that the General Division erred in law

[32] The General Division applied the correct law.

[33] The law says that a claimant is disqualified from receiving benefits if the claimant voluntarily left their job without just cause.[17]

[34] "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.[18]

[35] 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.

[36] The General Division decided that the circumstance in which the Claimant left his job was to attend school full-time program.[19] The General Division decided that having a referral from NB-EI Connect to attend training was not a circumstance of the Claimant's leaving because he left work on August 27, 2021, and obtained the referral, after that, on September 17, 2021.[20]

[37] The General Division concluded that the Claimant did not have just cause for quitting his job. His circumstance of leaving was a personal choice to attend school,

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[17] Section 30 of the *Employment Insurance Act* (EI Act) sets out this rule.
[18] Section 29(c) of the EI Act describes the test for "just cause."
[19] See paragraph 17 of the General Division decision.
[20] See paragraph 36 of the General Division decision.

and, having regard to that circumstance, the Claimant had the reasonable alternative of staying employed.[21]

[38] 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 from the Commission or an approved authority, you don't have just cause for leaving your job.[22]

[39] The General Division considered two prior decisions from the Tribunal that the Claimant's representative had provided. The General Division distinguished *EG v Canada Employment Insurance Commission* on the basis that the student in that case had a referral from an approved authority prior to quitting.[23] The General Division chose not to follow *BF v Canada Employment Insurance Commission*, where the member had considered the student's referral to training as a relevant circumstance, even though the student had not applied for the referral until after she left her job.[24] The General Division decided this was not a correct statement of the law.[25]

[40] It is not arguable that the General Division erred in law. 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.[26] The General Division is not bound by other decisions of the Tribunal but it is bound by the Federal Court of Appeal.

[41] The law says that only the circumstances that existed at the time a claimant quits can be considered.[27] So, even though the Claimant ended up receiving a referral from NB-EI Connect after quitting his job, the General Division correctly decided that the referral could not be considered a circumstance of leaving.

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[21] See paragraph 38 of the General Division decision.
[22] See paragraph 34 of the General Division decision.
[23] See *EG v Canada Employment Insurance Commission*, 2020 SST 748.
[24] See *BF v Canada Employment Insurance Commission*, 2018 SST 367.
[25] See paragraph 30 of the General Division decision.
[26] 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.
[27] See *Canada (Attorney General) v Lamonde*, 2006 FCA 44.

[42] 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.

[43] The General Division followed settled law in making the decision it did. The General Division was required to apply the law, not the requirements of the NB-EI Connect program.

– It is not arguable that the General Division breached procedural fairness

[44] The Claimant has not argued there was any procedural unfairness on the part of the General Division and I have not identified any such errors.

[45] Although the Claimant did not attend the hearing to provide evidence, the Claimant has not said in his Application to the Appeal Division that he was not able to attend or was unaware he could attend and provide evidence. The audio tape from the hearing confirms the member enquired with the representative whether the Claimant would be joining and the representative confirmed he would not. The representative did not advise that the Claimant was unable to attend or ask for an adjournment.[28]

[46] I note that the Notice of Hearing was addressed to both the Claimant and the representative, making it clear they both had the option of attending.[29]

[47] As such, it's not arguable that there was any breach of procedural fairness by the General Division in proceeding in the absence of the Claimant.

– It is not arguable that the General Division made an error of jurisdiction

[48] The Claimant has not argued that there was any error of jurisdiction and I have not identified any such error. The General Division decided the issue it had to decide and didn't decide any issues it did not have authority to decide.

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[28] This is what I heard from the audio tape of the General Division hearing at approximately 00:1:50.
[29] GD1-1.

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

Conclusion

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

Charlotte McQuade
Member, Appeal Division