



Citation: *ZM v Canada Employment Insurance Commission*, 2022 SST 615

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: Z. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated March 21, 2022
(GE-22-483)

Tribunal member: Janet Lew

Decision date: July 8, 2022

File number: AD-22-267

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, Z. M. (Claimant), is appealing the General Division decision. The General Division found that the Claimant voluntarily left her employment. The General Division also found that the Claimant had not shown that she had had just cause for leaving her job because she had reasonable alternatives to leaving. The General Division concluded that the Claimant was disqualified from receiving Employment Insurance benefits.

[3] The Claimant argues that the General Division made an important error about the facts. In particular, she denies that she ever asked to go on a leave of absence from her work. She claims that the General Division failed to recognize this evidence. She says that the General Division accepted her employer's statements that she asked for a leave. She says the General Division failed to scrutinize the employer's statements or consider the overall context and circumstances in which her departure occurred.

[4] Before the Claimant can move ahead with her 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 her appeal.

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.

Issue

[6] Is there an arguable case that the General Division overlooked some of the evidence?

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] For factual errors, the General Division had to have based its decision on an error that it made in a perverse or capricious manner, or without regard for the evidence before it.

[9] 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 overlooked some of the evidence?

[10] The Claimant argues that the General Division overlooked: (1) her denials that she went on a voluntary leave of absence, and (2), the overall context and circumstances in which her departure occurred.

[11] The Claimant argues that the General Division should have considered the following:

- Her employer treated her differently. Her employer asked her to work jobs that were outside her job description.

³ See section 58(1) of the DESD Act.

- The employer did not ask any of her co-workers to work different jobs. The employer laid off her co-workers.
- The Claimant objected to her supervisor that she was expected to work in an area outside her job description. None of her colleagues had to work outside their job descriptions. In response, the employer asked her to leave.
- The Claimant believed that all of her co-workers had been laid off. So, when the employer asked her to leave, she understood this to mean the employer was placing her on a leave of absence.
- The Claimant did not ask to go on leave, so says the employer has no reason to suggest that she had asked for a leave of absence. She says her employer was mistaken or “has something against [her] specifically” when it reported that she asked to be placed on a leave of absence.

[12] The Claimant argues that, if the General Division had considered this evidence, it would have accepted that she had not voluntarily left her employment.

[13] There is a general presumption in law that a decision-maker considers all of the evidence in front of it. So, decision-makers do not have to refer to all of the evidence in front of them. However, they have to discuss and analyze evidence if it is of such importance that it could have some impact on the outcome.

[14] But, in fact, the General Division member considered this evidence. The General Division acknowledged that the Claimant said she did not voluntarily take a leave of absence. It also noted that she said that her employer told her that she could leave and return when school re-opened.⁴ The General Division also noted that all teachers for school-aged children at her school were laid off except for her.⁵

⁴ See General Division decision, at para 15.

⁵ See General Division decision, at para 35.

[15] Even if the Claimant had not asked for a leave of absence, the General Division found that the evidence still showed that the Claimant had decided not to continue working:⁶

- The Claimant may simply misunderstood her employer. The General Division noted that the Claimant assumed that she was being laid off. Her employer had laid her off in past summers.⁷
- While there may not have been enough work for the Claimant in the daycare, her employer had available work. The employer said that they were willing to employ the Claimant for the summer.⁸
- The employer also denied that it had laid off the Claimant. In fact, the employer claimed that she had asked for a leave of absence, without giving any reason.⁹
- The Claimant acknowledged that work was available. However, she said that it fell outside her job description.¹⁰ The employer stated that the job involved different aged children, but “it was the same role”.¹¹
- The Claimant confirmed that she had asked for a leave of absence, as she understood the employer did not have any work.¹²

[16] Clearly, there was conflicting evidence before the General Division. On the one hand, the Claimant denied that she had asked for a layoff. On the other hand, her employer stated that she had asked for a leave of absence. Her employer also stated that the same type of work was available, which the Claimant disputed.

⁶ See General Division decision, at para 24.

⁷ See General Division decision, at para 23, referencing the Claimant's Notice of Appeal, at GD2-9.

⁸ See General Division decision, at para 21.

⁹ See General Division decision, at para 19. See also Supplementary Records of Claim, dated October 20, 2021 and December 17, 2021, at GD3-19 and GD3-25, respectively.

¹⁰ See Claimant's Application to the Appeal Division--Employment Insurance, at AD1-9.

¹¹ See Supplementary Record of Claim, dated December 17, 2021, at GD3-25.

¹² See Supplementary Record of Claim, dated October 22, 2021, at GD3-18.

[17] There was evidence before the General Division that could reasonably support its conclusion. The General Division was entitled to weigh the evidence and accept the evidence that showed that work was available and that the Claimant could have continued working, even if it was in an area that fell outside her job description or involved different aged children. (This went to the issue of whether she had any reasonable alternatives to leaving.)

[18] The Claimant is essentially asking for a reassessment and asking that more weight be given to her evidence, over that of her employer. But, an assessment is not a basis for an appeal. Unless the General Division based its decision on an error of fact that it made in a perverse or capricious manner or without regard for the evidence before it, I have to defer to its findings.¹³

[19] For this reason, I am not satisfied that the Claimant has an arguable case that the General Division overlooked her evidence.

Conclusion

[20] Permission to appeal is refused because the appeal does not have a reasonable chance of success. This means that the appeal will not be going ahead.

Janet Lew
Member, Appeal Division

¹³ See, for instance, *Bose v Canada (Attorney General)*, 2018 FCA 220 at para 6.