



Citation: *DM v Canada Employment Insurance Commission*, 2022 SST 651

**Social Security Tribunal of Canada
Appeal Division**

Leave to Appeal Decision

Applicant: D. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated April 27, 2022
(GE-22-773)

Tribunal member: Pierre Lafontaine

Decision date: July 18, 2022

File number: AD-22-323

Decision

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

Overview

[2] The Applicant (Claimant) quit his job as he said his job in food service was high risk for exposure to COVID-19, and he lived with his mother who had heart problems; he did not want her catching COVID. The Respondent (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. Upon reconsideration, the Commission maintained its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[3] The General Division found that the Claimant quit his job. It found that he had reasonable alternatives to leaving his employment. The General Division concluded that the Claimant was disqualified from receiving benefits because he did not have just cause for his voluntary leaving.

[4] The Claimant seeks leave to appeal of the General Division's decision to the Appeal Division. He submits that his mother has a heart problem that makes her vulnerable to COVID-19. He did not want to take that risk in these uncertain times.

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

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

Issue

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

Analysis

[8] 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.

[9] 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.

[10] 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?

[11] In support of his application for leave to appeal, the Claimant submits that his mother has a heart problem that makes her vulnerable to COVID-19. He did not want to take that risk in these uncertain times.

[12] 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.

[13] 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.

[14] The General Division found that the Claimant voluntarily left his job.

[15] The Claimant argued that he had just cause for leaving his job due to concern about exposing his mother to COVID-19, as he worked in food service, a high-risk industry for exposure.

[16] The General Division found that there was no evidence to support that the Claimant was at any greater risk of contacting COVID-19 when he quit in June 2021, as opposed to the time he had worked prior to when he quit. It considered that the Claimant declared to the Commission that nothing happened in June 2021 that made the risk level change.¹

[17] The General Division found that a reasonable alternative would have been for the Claimant to continue working while looking for another job. He also could have discussed with his employer about his safety concerns regarding COVID-19. He did not.

[18] The preponderant evidence shows that the Claimant made a personal choice to end his employment, which perhaps was a good personal choice for him at that time. However, a good personal choice does not establish just cause for leaving employment under the law.

[19] Unfortunately, for the Claimant, an appeal to the Appeal Division is not an opportunity to re-present evidence and hope for a different outcome.

¹ See GD3-21.

[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