



[TRANSLATION]

Citation: *VA v Canada Employment Insurance Commission*, 2022 SST 770

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: V. A.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated
June 29, 2022 (GE-22-1077)

Tribunal member: Pierre Lafontaine

Decision date: August 17, 2022

File number: AD-22-425

Decision

[1] Leave to appeal is refused. The appeal will not proceed.

Overview

[2] The Applicant (Claimant) worked for her employer for three days. She decided to leave her job on June 21, 2021. She started a new job on July 12, 2021, and stopped working there on September 14, 2021.

[3] The Claimant applied for Employment Insurance (EI) sickness benefits on September 14, 2021. The Respondent (Commission) paid her 15 weeks of sickness benefits. It then refused to pay her regular benefits because she voluntarily left her job without just cause on June 21, 2021.

[4] The Claimant requested a reconsideration of that decision, but the Commission upheld its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[5] The General Division found that the Claimant had chosen to leave her job. It found that the Claimant did not have reasonable assurance of another employment when she decided to leave her job. The General Division found that the Applicant had other reasonable alternatives to leaving her job when she did. It concluded that the Claimant did not have just cause for leaving her job under the law.

[6] The Claimant seeks leave from the Appeal Division to appeal the General Division decision. She argues her new employer hired her on June 24, 2021. The Claimant says that she had just cause for leaving her job because of her employer's verbal abuse.

[7] I am refusing leave to appeal because the Claimant has not raised a ground of appeal based on which the appeal has a reasonable chance of success.

Issue

[8] Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

Analysis

[9] Section 58(1) of the *Department of Employment and Social Development Act* (DESD Act) specifies the only grounds of appeal of a General Division decision. These reviewable errors are the following:

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.

[10] 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 has to be met at the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove her case; she must instead establish that the appeal has a reasonable chance of success. In other words, she must show that there is arguably a reviewable error based on which the appeal might succeed.

[11] I will grant leave to appeal if I am satisfied that at least one of the Claimant's stated grounds of appeal gives the appeal a reasonable chance of success.

Preliminary remarks

[12] The Claimant submitted new evidence in support of her application for leave to appeal.¹ I will not consider the new evidence submitted in support of her application for leave to appeal.

[13] It is well-established case law that the Appeal Division cannot consider new evidence since its powers are limited by section 58(1) of the DESD Act.

[14] The Claimant was told that the procedure to submit new evidence involves making an application to rescind or amend the decision of the General Division in accordance with section 66 of the DESD Act. Even so, the Claimant asked that the Appeal Division make a decision based on the evidence that was before the General Division.

Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

[15] The Claimant argues that the new employer hired her on June 24, 2021. The Claimant says that she had just cause to leave her job because of her employer's verbal abuse.

[16] The issue before the General Division was whether the Claimant voluntarily left her job without just cause.² This needs to be determined **based on the circumstances that existed when the Claimant left.**

[17] At the General Division hearing, the Claimant said that she had assurance of another job before leaving her job.

[18] The General Division noted that the Claimant initially told the Commission that she had not gotten an offer of employment before leaving her job.³ It also noted that the

¹ See AD1D-3, AD1E-5, and AD1E-6.

² In accordance with sections 29 and 30 of the *Employment Insurance Act*.

³ See GD3-28.

Claimant admitted that she applied for work after leaving her job.⁴ The General Division also took into account the email from June 23, 2021, which says that the Claimant was looking for work, to conclude that the Claimant did not have assurance of another job when she left on June 20, 2021.⁵

[19] I find that the employer reported hiring the Claimant only on July 5, 2021.⁶

[20] The notion of “reasonable assurance of another employment” assumes three things: “reasonable assurance,” “another employment,” and an “immediate future.”⁷

[21] The evidence before the General Division shows that the Claimant had not received an offer of employment when she decided to leave, and she did not know when she would have another job.

[22] The Claimant did not have reasonable assurance of another employment in her immediate future under the law. So, she did not have just cause for voluntarily leaving her job for that reason.

[23] The Claimant also argued before the General Division that her employer made aggressive comments towards her. So, she had just cause for leaving her job.

[24] The General Division found that the Claimant initially told the Commission that she had quit her job for another one. It was only after that, that she said she had received aggressive comments. The General Division gave little weight to this statement and the explanations given at the hearing. It considered that the Claimant hesitated during her testimony and that she was not able to give concrete examples. The General Division found that the Claimant could have talked about the situation with the employer before leaving her job after only three days.

⁴ See GD3-28.

⁵ See GD3-16 and GD3-18.

⁶ See GD3-16.

⁷ *Canada (Attorney General) v Lessard*, 2002 FCA 469.

[25] The General Division concluded from the evidence that the Claimant did not have just cause for leaving her job under the law.

[26] In my view, the General Division correctly stated the legal test for voluntary leaving. It applied this test to the facts of the case and looked at whether, after considering all of the circumstances, the Claimant had no reasonable alternative to leaving her job.

[27] I reiterate that an appeal before the Appeal Division is not an opportunity to present one's case again in the hopes of getting a different outcome. I find that the Claimant has not raised any question of fact, law, or jurisdiction concerning her voluntary leaving that could justify setting aside the decision under review.

[28] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for leave to appeal, I have no choice but to find that the appeal has no reasonable chance of success.

Conclusion

[29] Leave to appeal is refused. The appeal will not proceed.

Pierre Lafontaine
Member, Appeal Division