



Citation: *SS v Canada Employment Insurance Commission*, 2022 SST 768

**Social Security Tribunal of Canada  
Appeal Division**

**Leave to Appeal Decision**

**Applicant:** S. S.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated June 15, 2022  
(GE-22-1193)

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**Tribunal member:** Neil Nawaz

**Decision date:** August 15, 2022

**File number:** AD-22-431

## Decision

[1] Leave (permission) to appeal is refused. The appeal will not be going forward.

## Overview

[2] The Applicant (Claimant) left his job on November 27, 2021 and applied for Employment Insurance (EI) benefits. The Canada Employment Insurance Commission (Commission) looked at the Claimant's reasons for leaving. It decided that he voluntarily left his job without just cause, so it didn't have to pay him benefits. The Commission maintained its initial decision on reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal's General Division.

[3] The General Division found that the Claimant had voluntarily left his job without just cause. It found that the Claimant's working conditions were not so intolerable that he had no choice but to leave. It found that asking the Claimant to come to the office did not amount to a significant change in his work duties. It found that the Claimant had failed to prove that his working conditions were a danger to his health and that, even if they were, he had other reasonable alternatives to leaving his job.

[4] The Claimant is now seeking permission to appeal the General Division's decision to the Appeal Division. He argues that he had no reasonable alternative to leaving his job. He also alleges that the General Division ignored the following information:

- His employer changed his job description. When he was hired, he was told that he would be travelling 50 percent of the time and working remotely. He was later told that he wouldn't be travelling and had to work out of the office.
- He is 66 years old and immunocompromised. There were many COVID-19 cases in the office and, even though his employer had all kinds safety protocols in place, he did not feel safe.
- He and his supervisor had an antagonistic relationship. It is documented that his supervisor mistreated him and lied to him from the day he started.

- He feels the General Division did not give him the benefit of the doubt and made the decision based on the wrong facts.

[5] I have decided to refuse the Claimant's permission to appeal because his appeal has no reasonable chance of success.

## Issue

[6] There are four grounds of appeal to the Appeal Division. A claimant must show that the General Division

- proceeded in a way that was unfair;
- acted beyond its powers or refused to use them;
- interpreted the law incorrectly; or
- based its decision on an important error of fact.<sup>1</sup>

An appeal can proceed only if the Appeal Division first grants leave, or permission, to appeal.<sup>2</sup> At this stage, the Appeal Division must be satisfied that the appeal has a reasonable chance of success.<sup>3</sup> This is a fairly easy test to meet, and it means that a claimant must present at least one arguable case.<sup>4</sup>

[7] I had to decide whether any of the Claimant's reasons for appealing fell within one or more of the above-mentioned grounds of appeal and, if so, whether they raised an arguable case.

## Analysis

[8] In his application requesting permission to appeal, the Claimant says that he had no choice but to leave his job because his employer abused and antagonized him, changed the terms of his employment, and exposed him to a potential COVID-19

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<sup>1</sup> *Department of Employment and Social Development Act* (DESDA), section 58(1).

<sup>2</sup> DESDA, sections 56(1) and 58(3).

<sup>3</sup> DESDA, section 58(2).

<sup>4</sup> *Fancy v Canada (Attorney General)*, 2010 FCA 63.

infection. The Claimant alleges that the General Division either ignored evidence or considered the evidence but drew the wrong conclusions from it.

[9] I don't see an arguable case here.

[10] An appeal to the Appeal Division is not meant to be a "redo" of the General Division hearing. Under the law governing the Appeal Division, I can only consider certain types of error that the General Division might have made in arriving at its decision. To succeed at the Appeal Division, it is not enough to simply disagree with the General Division's decision and repeat evidence that the General Division has already considered.

[11] In this case, the General Division decided that the Claimant did not have just cause to voluntarily leave his employment. It found that his employer did not significantly change his working conditions. It found that his health and safety were not put at risk. It found that he had reasonable alternatives to quitting his job, for instance:

- He could have talked to his supervisors;
- He could have looked for another job; or
- He could have notified provincial authorities about his working conditions.

[12] The General Division based these findings on the following evidence:

- The Claimant's employment contract said that the Claimant would be expected to travel "up to 50 percent of the time, or "as required," and it didn't say anything about working remotely;
- The Claimant's former employer maintained a detailed COVID-19 safety plan, and none of the evidence indicated that the employer wasn't following the safety plan; and
- The employer's notes from the exit interview indicate that the Claimant did not cite COVID-19 safety concerns as one of his reasons for leaving.

[13] In its role as fact finder, the General Division is entitled some to leeway in how it chooses to weigh the evidence. From what I can see, the General Division made a good-faith effort to sort through sometimes conflicting information and make rational inferences from that information. The Claimant may not agree with how the General Division considered the evidence, but that it not among the grounds of appeal permitted under the law.

## **Conclusion**

[14] For the above reasons, I find that the appeal has no reasonable chance of success.

[15] Permission to appeal is refused.

Neil Nawaz  
Member, Appeal Division