Citation: *LB v Canada Employment Insurance Commission*, 2022 SST 776

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	L. B.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated May 31, 2022 (GE-22-982)

Tribunal member:	Neil Nawaz
Decision date:	August 17, 2022
File number:	AD-22-396

Decision

[1] Permission to appeal is refused. This appeal will not be going forward.

Overview

[2] The Claimant used to work as an accounts payable clerk for a manufacturing company. On November 18, 2020, she left her job and applied for Employment Insurance (EI) benefits. She said that she had no choice but to quit her job so that she could stay at home and look after her daughter, whose school frequently sent her home because of COVID-19 outbreaks.

[3] The Canada Employment Insurance Commission (Commission) looked at the Claimant's reasons for leaving. It decided that she had voluntarily left her job without just cause, so it didn't have to pay her EI benefits. The Commission maintained its initial decision on reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal's General Division.

[4] The General Division found that the Claimant had voluntarily left her job without just cause. It found that the Claimant had several reasonable alternatives to leaving her job:

- She could have complied with her employer's request to provide a note from her child's school confirming COVID-related outbreaks and closures;
- She could have met with her employer to discuss an action plan;
- She could have requested a leave of absence from her job; or
- She could have obtained a new job before quitting her position.

[5] The Claimant is now seeking permission to appeal the General Division's decision. She alleges that the General Division based its decision on documentary evidence and discounted her testimony about her former employer's unreasonable demands. She insists that she had no reasonable alternative to leaving her job. She says that she immediately passed onto her employer the only document that her child's

school made available—a generic government-issued pandemic guideline. She maintains that her employer did not require anything more specific than that from other parents.

[6] I have decided to refuse the Claimant permission to appeal because her appeal has no reasonable chance of success.

Issue

[7] 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.[1]

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

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

Analysis

[9] The Claimant comes to the Appeal Division making essentially the same arguments that she made at the General Division. She insists that she had no choice but to resign from her job because of increasing pressure from her employer. She says that she did everything reasonably possible to show her employer that her daughter was

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[1] See *Department of Employment and Social Development Act* (DESDA), section 58(1).
[2] See DESDA, sections 56(1) and 58(3).
[3] See DESDA, section 58(2).
[4] See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

being regularly sent home from school because of COVID-related precautions. She claims that her employer unfairly held her to higher standard than it did other employees with children.

[10] I don't see an arguable case for these submissions. First, the Appeal Division does not rehear evidence that has already been heard at the General Division. Second, the General Division is presumed to have considered all the evidence before it.

The Appeal Division does not rehear evidence

[11] To succeed at the Appeal Division, a claimant must do more than simply disagree with the General Division's decision. A claimant must also identify specific errors that the General Division made in coming to its decision and explain how those errors, if any, fit into the one or more of the four grounds of appeal permitted under the law. An appeal at the Appeal Division is not meant to be a "redo" of the General Division hearing. It is not enough to present the same evidence and arguments to the Appeal Division in the hope that it will decide your case differently.

The General Division is presumed to have considered the evidence

[12] One of the General Division's jobs is to make findings of fact. In doing so, it is presumed to have considered all the evidence before it.[5] In this case, I don't see any indication that the General Division disregarded the Claimant's testimony. In fact, the General Division discussed her testimony at length in its decision but ultimately found it less than convincing.

The General Division considered the Claimant's evidence

[13] Whether a claimant has just cause to leave their employment depends on many factors. In this case, the General Division concluded that the Claimant had reasonable alternatives to quitting her job when she did. It came to this conclusion for the following reasons:

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[5] See *Simpson v Canada (Attorney General)*, 2012 FCA 82.

- The Claimant did not make a serious attempt to obtain proof, as requested by her employer, that she needed to be home to watch her children;
- The Claimant did not provide evidence, other than her own anecdotal account, that she was the only employee required to produce a customized letter from her children's school;
- The Claimant was not a credible witness because of several inconsistencies in her evidence, for instance:
  - She provided varying statements about whether and when her employer allowed her to work from home; and
  - She testified that her employer never told her that the generic school letter was insufficient; however, in previous statements, she said that her employer had targeted her by demanding that she alone provide specific information about her child's school absences;
- The Claimant complained of a negative work environment, including harassment and bullying, yet her resignation letter made no mention of allegations of mistreatment by her employer.

[14] I see nothing to suggest that the General Division acted unfairly, disregarded evidence, or misinterpreted the law by basing its decision on the above factors. As the General Division rightly noted, having a good reason to leave a job is not the same thing as having just cause to leave a job. The Claimant may not agree with how the General Division considered the evidence, but that is not among the grounds of appeal permitted by the law.

The General Division has a right to weigh evidence

[15] One of the General Division's roles is to establish facts. In doing so, it is entitled to some leeway in how it weighs evidence. The Claimant may believe that her testimony proved her case, but it was just one of many factors that the General Division had to consider.

[16] The Federal Court of Appeal addressed this point in a case called *Simpson*,[6] in which the claimant argued that the tribunal attached too much weight to selected evidence. In dismissing the application for judicial review, the Court held:

> [A]ssigning weight to evidence, whether oral or written, is the province of the trier of fact. Accordingly, a court hearing an appeal or an application for judicial review may not normally substitute its view of the probative value of evidence for that of the tribunal that made the impugned finding of fact.

[17] In this case, the General Division made a full and genuine effort to sort through the relevant evidence and assess its quality. I see no reason to second-guess the General Division's decision to give some items of evidence more weight than others.

Conclusion

[18] For the above reasons, I find that the appeal has no reasonable chance of success. Permission to appeal is refused.

Neil Nawaz
Member, Appeal Division

[6] See *Simpson v Canada (Attorney General)*, 2012 FCA 82.