



[TRANSLATION]

Citation: *CH v Canada Employment Insurance Commission*, 2022 SST 1157

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: C. H.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated
October 21, 2022 (GE-22-1709)

Tribunal member: Pierre Lafontaine

Decision date: November 7, 2022

File number: AD-22-771

Decision

[1] Leave (permission) to appeal is refused. This means that the appeal will not proceed.

Overview

[2] The Applicant (Claimant) worked as an orderly in a long-term care facility. She decided to leave her job. She applied for Employment Insurance (EI) benefits. The Commission denied her EI benefits because she voluntarily left her job without just cause. The Claimant asked the Commission to reconsider, but it upheld its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[3] The General Division found that the Claimant chose to leave her job. It found that she had reasonable alternatives to leaving her job when she did. She could have found a job before quitting. She also could have waited to be suspended and stayed with the employer. The General Division decided that the Claimant did not have just cause for leaving her job under the law.

[4] The Claimant seeks leave from the Appeal Division to appeal the General Division decision. She argues that she was harassed by the government measures, not by her manager or co-workers. She says that the measures are discriminatory and go against human rights and her conscience. She says that she had the right to refuse the vaccine to protect her health.

[5] 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

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

Analysis

[7] 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 the following:

1. The General Division hearing process was not fair in some way.
2. The General Division did not decide an issue 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.

[8] 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 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.

[9] 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.

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

[10] The Claimant argues that she was harassed by the government measures, not by her manager or co-workers. She says that the measures are discriminatory and go against human rights and her conscience. She says that she had the right to refuse the vaccine to protect her health.

[11] The issue before the General Division was whether the Claimant voluntarily left her job without just cause.¹ This needs to be determined based on the circumstances that existed when the Claimant quit.

[12] A claimant has just cause to leave if, considering all the circumstances, they had no reasonable alternative to quitting their job.

[13] The evidence before the General Division shows that the Claimant worked as an orderly in a long-term care facility. In June 2021, her employer told many employees, including her, that a vaccination policy would soon be in place for all health care workers.

[14] The Claimant was later told that the policy would take effect on November 15, 2021. Employees had the choice to get vaccinated or get tested three times a week. Those who refused to follow the policy would be placed on leave without pay.

[15] On November 4, 2021, the Claimant went back to work after her vacation. On November 10, 2021, five days before the policy came into effect, she resigned. She did not want to get vaccinated or submit to the tests required by the employer's policy.

[16] Before the General Division, the Claimant admitted making the choice to leave. The General Division found that the evidence did not support that the Claimant had been harassed on the job because the employer was implementing a policy during the pandemic. It found that the Claimant had not been discriminated against, since the employer's policy applied to all health care workers. In addition, human rights protection does not apply to personal choices or preferences.²

[17] The General Division found that the Claimant had not shown that her employer had not respected her religious beliefs or had acted contrary to professional ethics.

¹ In accordance with sections 29 and 30 of the *Employment Insurance Act*.

² See *Canadian National Railway Company v Seeley*, 2014 FCA 111.

[18] The General Division found that there was no evidence that the employer had acted inappropriately when it told the Claimant that she would be placed on leave without pay if she refused to follow its policy in response to government guidelines.³

[19] The General Division found on the evidence that the Claimant made a personal choice not to follow the employer's policy because, in her opinion, the vaccines constituted a danger to her health. She also refused the employer's proposed accommodation of getting tested for COVID-19.

[20] The General Division found that a reasonable alternative to leaving would have been for the Claimant to find a job in the months before the employer's policy was put in place or to stay with the employer until she found another job. When she decided to leave, her employer had not suspended her yet. The General Division found that she caused her unemployment.

[21] The General Division found on the evidence that the Claimant did not have just cause for leaving her job under the law.

[22] As the General Division decided, the Claimant made a personal choice to end her employment, which perhaps was a good personal choice for her at the time. But a good personal choice does not establish good cause for leaving a job under the law.

[23] 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.

³ I note that, in a recent decision, the Superior Court of Quebec found that provisions that imposed vaccination did not violate section 7 of the *Canadian Charter of Rights [sic]* despite infringing personal liberty and security. Even if a section 7 Charter violation were found, it would be justified as a reasonable limit under section 1 of the Charter—*United Steelworkers, Local 2008 c Attorney General of Canada*, 2022 QCCS 2455. See also *Parmar v Tribe Management Inc*, 2022 BCSC 1675: In a constructive dismissal case, the Supreme Court of British Columbia found that the employer's mandatory vaccination policy was a reasonable and lawful response to the uncertainty created by the COVID-19 pandemic based on the information that was then available to it.

[24] It is important to remember that an appeal to the Appeal Division is not an opportunity to present your case again and hope for 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.

[25] 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

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

Pierre Lafontaine
Member, Appeal Division