



Citation: *DS v Canada Employment Insurance Commission*, 2022 SST 1342

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: D. S.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated October 3, 2022
(GE-22-1778)

Tribunal member: Neil Nawaz

Decision date: November 24, 2022

File number: AD-22-808

Decision

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

Overview

[2] The Applicant (Claimant) was employed as a truck driver in a X mine in Y. He left his job on February 4, 2022 and enrolled in a full-time adult literacy and basic education course. At the same time, he applied for Employment Insurance (EI) benefits.

[3] The Canada Employment Insurance Commission (Commission) looked at the Claimant's reasons for leaving. It decided that he had voluntarily left his job without just cause, so it didn't have to pay him benefits. The Claimant appealed this decision to the Social Security Tribunal's General Division.

[4] The General Division found that the Claimant had voluntarily left his job without just cause. It found that, however commendable the Claimant's desire to further his education might have been, his decision to leave his job was a personal choice. It also found that, although the Claimant might have been the target of workplace harassment, it was not the main reason he quit his job.

[5] The Claimant is now seeking permission to appeal the General Division's decision to the Appeal Division. He argues that the General Division ignored the extent of his harassment at work and the major role it played in his decision to leave his job.

[6] I have decided to refuse the Claimant's permission to appeal because his 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 fell within one or more of the above-mentioned grounds of appeal and, if so, whether they raised an arguable case.

Analysis

[9] In his application requesting permission to appeal, the Claimant said that the General Division should have given more weight to the fact that he was harassed at work.

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

[11] An appeal to the Appeal Division is not meant to be a "do-over" 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.

[12] One of the General Division's jobs is to make findings of fact. In doing so, the General Division is presumed to have considered all the evidence before it. The

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.

General Division is also entitled to some leeway in how it chooses to assess that evidence.⁵

[13] In this case, the General Division considered the Claimant's evidence that harassment played a role in his decision to leave his job:

He said that his supervisor and some of his co-workers had harassed him "a little bit" on a few occasions, "just for fun," making offensive comments to him that were sexual, judgmental and based on his character and body type. They also played jokes on him sometimes. He said this was part of the reason that he quit.⁶

[14] Having heard this evidence, the General Division found that the Claimant quit his job primarily to go back to school. The General Division accepted that the Claimant was mistreated at work, but it concluded that such mistreatment was not why he quit. It came to this conclusion for the following reasons:

- At the hearing, the Claimant himself testified that the main reason he quit his job wasn't harassment—it was because he had been accepted into a four-month adult education course;⁷
- He said that the harassment was "kind of rare but not exactly rare";⁸
- He said that, if he weren't going back to school, he wouldn't have quit when he did because of the harassment;⁹ and
- He said that he never reported the harassment to human resources because he didn't want his supervisor to get in trouble or his co-workers to lose their jobs.¹⁰

⁵ See *Simpson v Canada (Attorney General)*, 2012 FCA 82 at paragraph 10.

⁶ See General Division decision, paragraph 32.

⁷ The Claimant said words to this effect at 1:34:10 of the recording of the General Division hearing.

⁸ Refer to the recording at 1:19:10.

⁹ Refer to the recording at 1:34:30.

¹⁰ The Claimant said words to this effect at 1:30:00 of the recording.

[15] Based on this information, the General Division found that the Claimant did not have just cause to voluntarily leave his employment. It also found that he had reasonable alternatives to quitting his job, for instance:

- He could have asked his employer in advance for time off to take the course;
- He could have arranged for schooling that wouldn't have required him to leave his job; and
- He could have reported workplace harassment to his supervisor or to human resources in an effort to resolve the issue.

[16] I don't see how the General Division erred in making these findings. From what I can see, the General Division made a good-faith effort to sort through the available evidence and make rational inferences from that evidence—while following the law. The Claimant may not agree with the General Division's analysis on this issue, but that by itself is not reason to overturn its decision.

Conclusion

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

[18] Permission to appeal is refused.

Neil Nawaz
Member, Appeal Division