



Citation: *LM v Canada Employment Insurance Commission*, 2022 SST 1347

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: L. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated September 20, 2022
(GE-22-2280)

Tribunal member: Neil Nawaz

Decision date: November 22, 2022

File number: AD-22-691

Decision

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

Overview

[2] The Claimant quit his construction job in X so that he could return home to care for his wife and son in X. 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 employment insurance (EI) benefits.

[3] The Claimant appealed the Commission's decision to the Social Security Tribunal's General Division. The General Division dismissed the appeal, a decision that the Appeal division later overturned for reasons of procedural fairness.

[4] The General Division held a second hearing. It again found that the Claimant had voluntarily left his job without just cause. It also found that the Claimant had a reasonable alternative to leaving his job—he could have continued working in X until he secured another job closer to home.

[5] The Claimant asked the Appeal Division for permission to appeal the General Division's decision.¹ He expressed disagreement with the General Division's decision and asked for someone else to take a look at his file.

[6] The Tribunal then sent the Claimant a letter reminding him of the permitted grounds of appeal and asking him to elaborate on his reasons for appealing. In an email dated November 20, 2022, the Claimant accused the Tribunal of humiliating his family by asking him to justify his decision to accept a layoff from his job in X. He added that his family's tragedy was no one's business but his own.

¹ See Claimant's application for leave to appeal dated September 23, 2022, ADN01.

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

Issue

[8] 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.²

An appeal can proceed only if the Appeal Division first grants leave, or permission, to appeal.³ At this stage, the Appeal Division must be satisfied that the appeal has a reasonable chance of success.⁴ This is a fairly easy test to meet, and it means that a claimant must present at least one arguable case.⁵

[9] I have 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

[10] The Claimant comes to the Appeal Division making essentially the same argument that he made at the General Division. He insists that he had no choice but to leave his job in X to attend to a family crisis back home in X.

[11] I don't see an arguable case for this submission. 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 consider all the evidence before it.

² See *Department of Employment and Social Development Act* (DESDA), section 58(1).

³ See DESDA, sections 56(1) and 58(3).

⁴ See DESDA, section 58(2).

⁵ See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

The Appeal Division does not rehear evidence

[12] 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

[13] 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.⁶ In this case, I don't see any indication that the General Division disregarded the Claimant's testimony. In fact, the General Division discussed his testimony at length in its decision but ultimately found it less than compelling.

The General Division considered the Claimant's evidence

[14] 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 his job when he did. It came to this conclusion for the following reasons:

- The Claimant said that he was needed at home, but he could have continued working in X until he found another job closer to X;
- The Claimant said that it wasn't safe for his wife to pick him up at the airport during the winter, but he could have made alternative arrangements to transport himself to and from the airport; and

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

- The Claimant said that his stress levels were high, but he could have explored the possibility of taking sick leave and/or applying for EI sickness benefits.

[15] 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

[16] 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 his case, but it was just one of many factors that the General Division had to consider.

[17] The Federal Court of Appeal addressed this point in a case called *Simpson*,⁷ 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.

[18] 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.

⁷ See *Simpson v Canada (Attorney General)*, 2012 FCA 82.

Conclusion

[19] 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