



Citation: *SM v Canada Employment Insurance Commission*, 2022 SST 1484

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

**Applicant:** S. M.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated October 27, 2022  
(GE-21-1371)

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**Tribunal member:** Neil Nawaz

**Decision date:** December 14, 2022

**File number:** AD-22-875

## Decision

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

## Overview

[2] The Applicant (Claimant) worked at an assisted retirement and long-term living facility for 12 years. After suffering a series of personal losses, she left her job on April 8, 2021 and applied for Employment Insurance (EI) benefits. The Canada Employment Insurance Commission (Commission) decided that the Claimant had voluntarily left her job without just cause, so it didn't have to pay her benefits. The Claimant appealed the Commission's decision to the Social Security Tribunal's General Division.

[3] The General Division held an in-person hearing and agreed with the Commission. It decided that the Claimant had voluntarily left her job without just cause. It found that, while the Claimant might have had good personal reasons for leaving her job, they were not enough to establish just cause under the *Employment Insurance Act*. The General Division also found that the Claimant had reasonable alternatives to leaving when she did.

[4] The Claimant is now seeking permission to appeal the General Division's decision to the Appeal Division. She argues that the General Division failed to recognize that she went through a lot in a short time and had good reasons to leave her job. She notes that she lost her husband unexpectedly in June 2018, followed by her three brothers-in-law. She says that she found herself alone in X but went back to work anyway. However, when the pandemic hit in March 2020, she went from loneliness to isolation. She says that she had to make a change in her life, so she moved back to X to be with her family.

[5] I have reviewed the General Division's decision, as well as the law and the evidence it used to reach that decision. I have concluded that the Claimant's appeal does not have a 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] The Claimant comes to the Appeal Division arguing that the General Division essentially ignored her claims. She insists that she had no choice but to resign from her job. She says that she had to go back to her hometown to protect her mental health.

[9] I don't see a case for this argument. First, the Appeal Division does not rehear evidence that has already been heard at the General Division. Second, the General Division **did** consider the Claimant's evidence but found nothing in the law that could help her.

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

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

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

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

## **The Appeal Division does not rehear evidence**

[10] 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.

[11] 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.<sup>5</sup> In this case, I don't see any indication that the General Division disregarded the Claimant's evidence. In fact, the General Division discussed her evidence at length in its decision. However, it concluded that the evidence, when applied to the law, didn't entitle her to EI benefits.

## **The General Division considered the Claimant's evidence**

[12] Whether a claimant has just cause to voluntarily leave their employment depends on many factors. In this case, the General Division concluded that the Claimant had reasonable alternatives to leaving her job when she did, for instance:

- She could have taken time off work or spoken to her employer about a leave of absence;
- She could have spoken to a doctor about her psychological well-being prior to quitting her job; or
- She could have continued working for her employer until she lined up another job in X.

[13] The General Division based these findings on the following factors:

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<sup>5</sup> See *Simpson v Canada (Attorney General)*, 2012 FCA 82.

- The Claimant said that she never approached her employer about taking time off work to address her mental health;
- The Claimant said that she didn't spoke to her family doctor about her mental health until six months after she left her job; and
- The Claimant said that she didn't look for any jobs in X before quitting her position.

[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.

[15] The General Division recognized that the Claimant was lonely when her husband passed away and that her loneliness was made worse by the pandemic. The General Division also understood that she wanted to move to a community where she had family. However, as the General Division rightly noted, having good reasons to leave a job is not the same thing as having just cause to leave a job when **reasonable** alternatives are available. The Claimant may not agree with the General Division's standard for reasonability, but she has not described an error that leads me to conclude that its analysis was unreasonable.

## Conclusion

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

[17] Permission to appeal is refused.

Neil Nawaz  
Member, Appeal Division