



Citation: *PW v Canada Employment Insurance Commission*, 2022 SST 1448

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

# **Leave to Appeal Decision**

**Applicant:** P. W.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated November 4, 2022  
(GE-22-2174)

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**Tribunal member:** Neil Nawaz

**Decision date:** December 9, 2022

**File number:** AD-22-820

## Decision

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

## Overview

[2] The Applicant (Claimant) started a job as a bookkeeping clerk on October 29, 2021. She left the job on January 7, 2022 and applied for Employment Insurance (EI) benefits. The Canada Employment Insurance Commission (Commission) looked at the Claimant's reasons for leaving. It decided that she had voluntarily left the 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 a hearing by teleconference and 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 had good reasons to leave her job. She alleges that the General Division ignored the fact that the job came with less pay and a dangerous commute. She says that it is unreasonable that she was denied EI after paying into the system for 30 years.

## Issue

[5] 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>

[6] 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**

[7] The Claimant comes to the Appeal Division arguing, in essence, that the General Division ignored her claims. She insists that she had no choice but to resign from her job because it turned out not to be a good fit with her skills and involved a dangerous winter commute.

[8] I don't see a case for these arguments. 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.

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

[9] 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

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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.

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**

[10] 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 did consider the Claimant's evidence**

[11] 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 talked to her employer about her job concerns;
- She could have discussed with her doctor the stress that she was experiencing at work; or
- She could have continued working for her employer until she found another job.

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

- The Claimant said that she had difficulty learning her employer's computer system. But she was on the job for less than three months and had been told that the system takes years to master.
- The Claimant said that the manager who hired her left the company, so she had no idea whether her employer still intended (as promised) to open a site in her hometown or, if not, whether it would have addressed her commuting

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

concerns. But the Claimant also said that she didn't think to talk to her employer about these issues.

- The Claimant said that she looked for another job while still working for her employer and even had a positive informal interview elsewhere. But the Claimant also said that no offer ever came out of the interview and that she left her job before securing a new one.

[13] 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.

[14] The Claimant also alleges that the General Division made no mention of the fact that she brought up the "Rights and Responsibilities" section, which she suggests gives her the right to leave a job for another one with better wages or with a more acceptable commuting time.

[15] I'm not exactly sure what section the Claimant is referring to. The standard application for EI benefits contains a list of "Rights and Responsibilities"—except it doesn't say anything about wages or commutes.<sup>6</sup> Based on the quotes in the Claimant's request for permission to appeal, it appears that the Claimant is referring to a page on the Government of Canada's EI website.<sup>7</sup> However, that page does not refer to any of the reasons for having "just cause" for leaving employment,<sup>8</sup> but to some of the factors that go into a determination of whether someone **already receiving EI benefits** is fulfilling their obligation to look for work.

[16] 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 when **reasonable** alternatives are available. The Claimant may not agree with the General Division's standard for

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<sup>6</sup> See Claimant's application for benefits dated GD3-6.

<sup>7</sup> See [Suitable employment and reasonable job search efforts - Canada.ca](#).

<sup>8</sup> The criteria for voluntarily leaving employment with "just cause" are outlined in section 29(c) of the *Employment Insurance Act*.

reasonability, but she has not described an error that leads me to conclude that its analysis was unreasonable.

## **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