



Citation: *AL v Canada Employment Insurance Commission*, 2023 SST 38

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: A. L.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated December 19, 2022
(GE-22-2850)

Tribunal member: Stephen Bergen

Decision date: January 14, 2023

File number: AD-22-967

Decision

[1] I am refusing leave (permission) to appeal. The appeal will not proceed.

Overview

[2] A. L. is the Applicant and also the benefit claimant (Claimant). The Claimant quit her Ontario job in May 2022 and moved to Nova Scotia for school. She would have preferred to stay in Ontario for the summer and keep her job, except that she had no place to stay. She could not stay in her apartment unless she signed a one-year lease agreement, and the Claimant could not make such a long commitment. She knew she had to be in Nova Scotia by the fall. The Claimant looked for other affordable accommodations but could not find anything. So, she moved, hoping that she would find a summer job when she arrived in Nova Scotia. She was unsuccessful.

[3] The Claimant applied for Employment Insurance (EI) benefits, but the Respondent (Commission) decided that she did not qualify for benefits. The Commission found that she had voluntarily left her employment without just cause. The Commission refused to change its decision when the Claimant asked it to reconsider.

[4] Next, the Claimant appealed the Commission's refusal to the General Division. The General Division dismissed her appeal. Now she is asking for leave to appeal the General Division dismissal.

[5] I am refusing leave to appeal. The Claimant has no reasonable chance of success in her appeal. She has not identified any error in the General Division decision.

Issues

[6] Did the General Division make an error of "procedural fairness"?

[7] Did the General Division's make an important error of fact by overlooking or misunderstanding that the Claimant had no affordable housing options where she lived in Ontario?

I am not giving the Claimant permission to appeal

[8] For the Claimant's application for leave to appeal to succeed, her reasons for appealing would have to fit within the "grounds of appeal." The grounds of appeal may be understood as follows:

- a) The General Division hearing process was not fair in some way.
- b) The General Division did not decide an issue that it should have decided. Or, it decided something it did not have the power to decide (error of jurisdiction).
- c) The General Division based its decision on an important error of fact.
- d) The General Division made an error of law when making its decision.¹

[9] I may only grant leave to appeal if I find that the Claimant has a reasonable chance of success on appeal. The Courts have equated a reasonable chance of success to an "arguable case."² This means I must find that there is an arguable case that the General Division made one or more of the errors described above, or I cannot permit the appeal to move forward.

Error of procedural fairness

[10] When the Claimant completed her Application to the Appeal Division, she selected only one ground of appeal. She asserted that the General Division didn't follow procedural fairness.

[11] The Claimant may believe that the General Division decision was not "fair" because she does not agree with how it was reasoned or with the decision result. But the "procedural fairness" ground of appeal is not about whether a party believes the decision is unfair.

¹ This is a plain language version of the grounds of appeal. The full text is in section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

² See *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; and *Ingram v Canada (Attorney General)*, 2017 FC 259.

[12] Procedural fairness is about the fairness of the General Division **process**. It includes procedural protections such as the right to an unbiased decision-maker and the right of parties to be heard and to know the case against them.

[13] The Claimant did not identify any action or procedure that could have affected her right to be heard or to respond to the Commission's arguments. She did not say that she did not get enough notice of the General Division hearing or that there was some problem with the pre-hearing exchange or disclosure of documents. She did not claim that the hearing itself was conducted unfairly or that she did not understand the hearing process.

[14] Likewise, the Claimant did not suggest that the General Division member acted in some way that made her think that the member was biased or had prejudged the matter.

[15] Therefore, there is no arguable case that the General Division acted in a way that was procedurally unfair.

Important error of fact

[16] As noted above, the Claimant requested leave to appeal on the ground of procedural fairness. However, the Federal Court has directed the Appeal Division to look beyond the stated grounds of appeal when it considers leave to appeal applications from self-represented parties like the Claimant.³

[17] In the Claimant's Application to the Appeal Division, she stated that the General Division took into consideration only that she was leaving employment for school. She said she left her job because she could not afford to renew her lease and had nowhere to live in the province. She acknowledged that she was leaving for school, but she said this was not the only fact.⁴

³ See, for example, the decision in *Karadeolian v. Canada (Attorney General)*, 2016 FC 615.

⁴ AD1-5.

[18] I think that the Claimant meant to argue to the Appeal Division that the General Division overlooked or misunderstood the evidence of why she quit her job. If the General Division based its decision on any finding of fact that ignored or misunderstood relevant evidence, this would be an important error of fact.

[19] I will consider whether the General Division may have made such an error.

[20] The Claimant is right that the General Division said that she left her job because she had to move to another province.⁵ However, this is not the whole of the decision, or all that the General Division said.

[21] The General Division also stated that the Claimant moved because of her plan to attend school. It said that she left her job early because she intended to move and didn't want to sign a long-term lease.⁶ It said that she decided to move early because she couldn't find other housing within her budget⁷ and that this lack of housing options was a reason she chose to leave her job when she did.⁸

[22] In the end, the General Division found that the Claimant had the reasonable alternative of staying employed in Ontario or making an earnest effort to seek employment in Nova Scotia before she quit and moved.⁹ It noted that she would have been able to sign a long-term lease if she had not planned to start school in Nova Scotia in September 2022.¹⁰

[23] The Claimant seems to disagree with how the General Division referred to her move as a "personal decision"; perhaps because she was committed to her school plans and felt she had no choice but to quit when she did. However, the General Division did not mean that her decision to quit was whimsical. It acknowledged that she

⁵ See the General Division decision at para 14.

⁶ See the General Division decision at para 17.

⁷ See the General Division decision at para 15.

⁸ See the General Division decision at para 17.

⁹ See the General Division decision at para 19.

¹⁰ See the General Division decision at para 17.

had good reasons for leaving but it said that they did not amount to just cause (as it is defined by the *Employment Insurance Act*).¹¹

[24] The Claimant has not identified any evidence that the General Division overlooked or misunderstood. There is no arguable case that the General Division made an important error of fact when it found that the Claimant had reasonable alternatives to leaving her employment.

[25] The Claimant has no reasonable chance of success in the appeal.

Conclusion

[26] I am refusing permission to appeal. This means that the appeal will not proceed.

Stephen Bergen
Member, Appeal Division

¹¹ See General Division decision at para 18.