



Citation: *KM v Canada Employment Insurance Commission*, 2023 SST 40

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

# **Leave to Appeal Decision**

**Applicant:** K. M.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated November 14, 2022  
(GE-22-2019)

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**Tribunal member:** Neil Nawaz

**Decision date:** January 17, 2023

**File number:** AD-22-936

## Decision

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

## Overview

[2] The Applicant (Claimant) worked as a sales associate in a retail clothing store. On December 26, 2020, she was laid off work because of a Covid-19-related shutdown. She was recalled to her job on February 8, 2021 but refused to return because she didn't want to expose herself or her grandmother to Covid.

[3] The Claimant applied for Employment Insurance (EI) benefits. She received them until May 2021, when she got a job at a golf course. However, that job did not begin until later because the government then extended its lockdown.

[4] In December 2021, the Canada Employment Insurance Commission (Commission) decided that the Claimant had voluntarily left her sales associate job without just cause. It determined that she was never entitled to EI and asked her to repay the benefits she had already received.

[5] The Claimant appealed the Commission's decision to the Social Security Tribunal.

[6] The Tribunal's General Division held a hearing by teleconference and agreed with the Commission. It decided that the Claimant had voluntarily left her job without just cause. It found that the Claimant's reasons for leaving her job were not enough to establish just cause under the *Employment Insurance Act*. It also found that the Claimant had reasonable alternatives to leaving when she did.

[7] 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 take the following factors into account:

- Her retail sales job was in an unsafe environment because there were no vaccines available yet;
- Her employer was not following proper Covid safety measures;
- She had a grandmother who was severely ill and was in and out of the hospital;
- She relocated to take the golf course job but lost it through no fault of her own; and
- No one told her that she would be disqualified from EI benefits until six months after she stopped receiving them.

[8] 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

[9] 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>

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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.

[10] 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**

[11] The Claimant comes to the Appeal Division arguing that the General Division essentially ignored her claims. She maintains that she had no choice but to resign from her retail sales job. She insists that she had legitimate concerns about passing Covid on to her sick grandmother. She does not understand why, if she was not entitled to EI benefits, it took so long for the Commission to tell her so.

[12] 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 **did** consider the Claimant's evidence but found nothing in the law that could help her. Third, whatever the Commission's delay in notifying her of her disenfranchisement, it had no bearing on whether she had just cause to quit her retail sales job.

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

[13] 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.

[14] 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

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

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**

[15] 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 discussed her concerns with her employer; or
- She could have found another job prior to quitting.

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

- The Claimant testified that she never raised her concerns with her employer and that when she was recalled to work in February 2021, she assumed nothing would change;
- The Claimant testified that her immediate supervisor didn't take Covid precautions seriously, but she never thought to approach anyone higher in the corporate hierarchy about her concerns; and
- The Claimant testified that she never looked for alternative employment before quitting her position.

[17] 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 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.

## **The Commission's delays were not relevant to the Claimant's reasons for leaving her retail sales job**

[18] The Claimant argues that the Commission treated her unfairly. She says that the Commission paid her EI benefits for several months even though she was ineligible for them. She complains that the Commission then took several more months to inform her that it had overpaid her.

[19] I don't see a case for this argument. At the General Division, the Claimant did not explicitly accuse the Commission of delay.<sup>6</sup> For that reason, the General Division can't be faulted for failing to consider an argument that it did not hear.

[20] The Claimant was not informed that she was disentitled to benefits until December 2021, but that does not change the fact that, under the law, she never had just cause to leave her employment. However long it took the Commission to determine that she was ineligible for EI benefits between February and May 2021, the Claimant was nonetheless the beneficiary of an overpayment.

## **Conclusion**

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

[22] Permission to appeal is refused.

Neil Nawaz  
Member, Appeal Division

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<sup>6</sup> I reviewed the Claimant's filings with the General Division and listened to the recording of the hearing before the General Division.