



Citation: *ED v Canada Employment Insurance Commission*, 2023 SST 451

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

# **Leave to Appeal Decision**

**Applicant:** E. D.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated January 9, 2023  
(GE-22-2395)

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**Tribunal member:** Solange Losier

**Decision date:** April 14, 2023

**File number:** AD-23-102

## Decision

[1] Leave (permission) to appeal is refused. The appeal will not proceed.

## Overview

[2] E. D. is the Claimant in this case. He was hired as a loss prevention officer for a retailer. Shortly after starting his new job, he quit because of an incident with the store director. He says he was harassed. He says that the workplace was hostile and toxic.

[3] The Canada Employment Insurance Commission (Commission) decided that he was not allowed to get Employment Insurance (EI) regular benefits because he quit his job without just cause.<sup>1</sup> This means that he was not entitled to get EI benefits.<sup>2</sup>

[4] The General Division agreed with the Commission.<sup>3</sup> It considered his reasons for leaving the job, but decided that he did not have just cause. It said there were reasonable alternatives.

[5] The Claimant is now asking for permission to appeal the General Division decision to the Appeal Division.<sup>4</sup> He says that the General Division made an error in fact and an error in law. But he does not point to any specific errors. Instead, he argues that it was reasonable for him to quit his job because the harassment was intolerable and he worked in a hostile work environment. He also says that it affected his mental health, causing psychological trauma.

[6] I am denying the Claimant's request for permission to appeal because it has no reasonable chance of success.

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<sup>1</sup> See reconsideration decision at GD3-35.

<sup>2</sup> See section 30(1) of the *Employment Insurance Act* (EI Act) says you are disqualified from receiving EI benefits if you voluntarily leave your job without just cause.

<sup>3</sup> See General Division decision at AD1A-1 to AD1A-12.

<sup>4</sup> See application to the Appeal Division at AD1-1 to AD1-6.

## **I am not accepting the new evidence**

[7] In the Claimant's leave to appeal forms, he wrote that the workplace affected his mental health, causing him psychological trauma.<sup>5</sup> This is new evidence that was not before the General Division when it made its decision.

[8] The Appeal Division generally does not accept new evidence, but there are some exceptions.<sup>6</sup> For example, I can accept new evidence if it provides one of the following:

- general background information only
- if it highlights findings made without supporting evidence
- shows that the Tribunal acted unfairly

[9] Since none of the exceptions apply, I cannot accept the Claimant's new evidence about his mental health and psychological trauma.

## **Issues**

[10] Is there an arguable case that the General Division made an error of fact?

[11] Is there an arguable case that the General Division made an error of law?

## **Analysis**

[12] An appeal can proceed only if the Appeal Division gives permission to appeal.<sup>7</sup>

[13] I must be satisfied that the appeal has a reasonable chance of success.<sup>8</sup> This means that there must be some arguable ground that the appeal might succeed.<sup>9</sup>

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<sup>5</sup> See AD1-3 where the Claimant raises mental health and psychological trauma.

<sup>6</sup> See *Sharma v Canada (Attorney General)*, 2018 FCA 48 and *Sibbald v Canada (Attorney General)*, 2022 FCA 157.

<sup>7</sup> See section 56(1) *Department of Employment and Social Development Act* (DESD Act).

<sup>8</sup> See section 58(2) of the DESD Act.

<sup>9</sup> See *Osaj v Canada (Attorney General)*, 2016 FC 115.

[14] I can only consider certain types of errors. I have to focus on whether the General Division could have made one or more of the relevant errors (this is called the “grounds of appeal”).<sup>10</sup>

[15] The possible grounds of appeal to the Appeal Division are that the General Division did one of the following:

- proceeded in a way that was unfair
- acted beyond its powers or refused to exercise those powers
- made an error in law
- based its decision on an important error of fact<sup>11</sup>

[16] For the Claimant’s appeal to proceed to the next step, I have to find that there is a reasonable chance of success on one of the grounds of appeal.

### **There is no arguable case that the General Division made an error of fact**

[17] An error of fact happens when the General Division makes its decision based on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it.<sup>12</sup> I can intervene if the General Division bases its decision on an important mistake about the facts of the case.

[18] The Claimant did not point out any specific error of fact that the General Division made. But, he argues that it was reasonable for him to quit his job because the harassment was intolerable and he worked in a hostile work environment.<sup>13</sup> He agrees that he did not take any recourse or try to fix the situation before leaving. He says that the situation at work was intolerable.

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<sup>10</sup> See section 58(1) of the DESD Act.

<sup>11</sup> See section 58(1) of the DESD Act.

<sup>12</sup> See section 58(1)(c) of the DESD Act.

<sup>13</sup> The Claimant’s arguments are found at AD1-3.

[19] The General Division had to decide whether the Claimant voluntarily left his job without just cause.<sup>14</sup>

[20] The General Division decided that the Claimant voluntarily left his job when he quit on February 16, 2022.<sup>15</sup> It decided that he did not have just cause to leave his job after considering the reasons he provided.

[21] The General Division decided that the single incident between the Claimant and store director did not amount to harassment.<sup>16</sup> It said that the Claimant overreacted to the store director's legitimate action to manage and direct him.

[22] The General Division considered whether there was antagonism between the Claimant and store director.<sup>17</sup> It decided that while the store director's conduct during a single incident may have been rude, it did not rise to a level of antagonism under the law.

[23] The General Division also decided that the workplace was not a hostile or toxic environment.<sup>18</sup> It rejected the Claimant's argument that the workplace might become toxic in the future, saying that it was speculative and unproven.

[24] The General Division also acknowledged that:

- the Claimant was upset following the incident with the store director
- he had high blood pressure
- it took him a week to calm down after the incident<sup>19</sup>

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<sup>14</sup> See section 29(c) of the EI Act.

<sup>15</sup> See paragraphs 13-16 of the General Division decision in AD1A-3.

<sup>16</sup> See paragraphs 30-35 of the General Division decision at AD1A-6 to AD1A-7.

<sup>17</sup> See paragraphs 38-39 of the General Division decision at AD1A-8.

<sup>18</sup> See paragraphs 47-48 of the General Division decision at AD1A-9 to AD1A-10.

<sup>19</sup> See paragraph 29 of the General Division decision at AD1A-6.

[25] The General Division found there were reasonable alternatives. Specifically, it said that the Claimant could have done three things:

- complained to human resources off-site
- continued to work
- secured another job before quitting<sup>20</sup>

[26] Aside from the Claimant's arguments, I reviewed the file and listened to the audio recording of the General Division hearing. I also examined the General Division decision.<sup>21</sup> The General Division's findings are consistent with the evidence in the file. I am satisfied that the General Division did not ignore or misconstrue any of the evidence before it.

[27] So, there is no arguable case that the General Division made an error of fact.

### **There is no arguable case that the General Division made an error of law**

[28] An error of law can happen when the General Division does not apply the correct law, or uses the correct law but misunderstands what it means or how to apply it.<sup>22</sup>

[29] The law says that just cause for voluntarily leaving a job exists if a person had no reasonable alternative to leaving, having regard to all the circumstances. That can include sexual or other harassment, or antagonism with a supervisor if the person is not primarily responsible for the antagonism.<sup>23</sup>

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<sup>20</sup> See paragraphs 53-55 of the General Division decision at AD1A-11.

<sup>21</sup> The Federal Court has said that I should do this in decisions like *Griffin v Canada (Attorney General)*, 2016 FC 874; and *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

<sup>22</sup> See section 58(1)(b) of the DESD Act.

<sup>23</sup> See sections 29(c)(i) and 29(c)(x) of the EI Act.

[30] As noted above, the Claimant did not point to a specific error of law that the General Division made. Instead, he is re-arguing his case because he disagrees with the outcome. He repeats that he had just cause to leave his job and explains why he did not seek to fix the situation before quitting.<sup>24</sup>

[31] The General Division stated and applied the law correctly when it decided that the Claimant did not have just cause to leave his job. An appeal to the Appeal Division is not a new hearing. I cannot reweigh the evidence in order to come to a different conclusion that is more favourable for the Claimant.<sup>25</sup>

[32] So, there is no arguable case that the General Division made an error of law.

## **Conclusion**

[33] Permission to appeal is refused. This means that the appeal will not proceed.

Solange Losier  
Member, Appeal Division

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<sup>24</sup> The Claimant's arguments are found at AD1-3.

<sup>25</sup> See *Garvey v Canada (Attorney General)*, 2018 FCA 118.