



Citation: *OD v Canada Employment Insurance Commission*, 2023 SST 446

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: O. D.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated December 30, 2022
(GE-22-2369)

Tribunal member: Solange Losier

Decision date: April 14, 2023

File number: AD-23-123

Decision

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

Overview

[2] O. D. is the Claimant in this case. He worked as a security guard for a company. He stopped working and applied for Employment Insurance (EI) regular benefits.

[3] The Canada Employment Insurance Commission (Commission) decided that he was not allowed to have EI regular benefits because he voluntarily left his job without just cause.¹

[4] The General Division decided that the Claimant voluntarily left his job.² It said he did not have just cause to quit his job because there were reasonable alternatives to leaving.

[5] The Claimant is now asking for permission to appeal the General Division decision to the Appeal Division.³ He says that the General Division made an important error of fact. However, he does not point to any specific errors that the General Division made. Instead, he argues that he had just cause to leave his job because there were no reasonable alternatives.

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

¹ See reconsideration decision at GD3-42; and section 30(1) of the *Employment Insurance Act* (EI Act) says you are disqualified from receiving EI benefits if you voluntarily leave your employment without just cause.

² See General Division decision at AD1A-1 to AD1A-16.

³ See application to the Appeal Division at AD1-1 to AD1-35.

I am not accepting the new evidence

[7] In the Claimant's application to the Appeal Division, he provided some new arguments, a medical note, and many emails sent to his employer.⁴ But, none of this evidence was before the General Division. The only exception is one email dated November 3, 2021, which the General Division referenced in its decision.⁵

[8] The Appeal Division generally does not accept new evidence. But there are some exceptions.⁶

[9] For example, I can accept new evidence if it does one of the following:

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

[10] Since none of the exceptions apply, I am not accepting the Claimant's new evidence.

Issue

[11] Is it arguable that the General Division based its decision on an important error of fact?

Analysis

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

⁴ See medical note and emails at AD1-14 to AD1-35.

⁵ See email at AD1-34 to AD1-35. This email was already part of the General Division file at GD13-2 to GD13-3, and GD2-41 to GD2-42. Also, see paragraph 65 of the General Division decision at AD1A-14.

⁶ See *Sharma v Canada (Attorney General)*, 2018 FCA 48; and *Sibbald v Canada (Attorney General)*, 2022 FCA 157.

⁷ See section 56(1) of the *Department of Employment and Social Development Act* (DESD Act).

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

[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”).¹⁰

[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 fact¹¹

[16] For the 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 bases its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it.¹² In other words, I can intervene if the General Division bases its decision on an important mistake about the facts of the case.

[18] The law says that a person has just cause for voluntarily leaving their job if, having regard to all the circumstances, they had no reasonable alternative to

⁸ See section 58(2) of the DESD Act.

⁹ See *Osaj v Canada (Attorney General)*, 2016 FC 115.

¹⁰ See section 58(1) of the DESD Act.

¹¹ See section 58(1) of the DESD Act.

¹² See section 58(1)(c) of the DESD Act.

quitting. The law provides a list of relevant circumstances, including any of the following: sexual or other harassment, and working conditions that constitute a danger to health and safety.¹³

[19] The General Division had to decide whether the Claimant left his job without just cause.¹⁴ It considered and made findings about whether the Claimant was harassed and if there were working conditions that constituted a danger to his health and safety. It also considered the Claimant's health conditions.

[20] The General Division concluded that the Claimant left his job when he demanded that the employer issue a Record of Employment and stopped accepting shifts.¹⁵ The General Division explained why it did not accept there was a shortage of work.¹⁶

[21] The General Division found that one of the guards at the hospital harassed the Claimant.¹⁷ It said that the guard's actions and comments could reasonably be expected to cause offence, humiliation, and stress to the Claimant.

[22] The General Division decided that the working conditions at the hospital could be a danger to the Claimant's health.¹⁸ It recognized that the Claimant had a previous career as a microbiologist and had some knowledge about the hospital ventilation system. It agreed that working in "closed" sites was likely a danger to his health.

[23] The General Division also found that the Claimant had his own health concerns and was taking prescription medication for them.¹⁹

[24] Even though the General Division found that the above circumstances existed at the Claimant's workplace, it still had to consider whether he had any reasonable alternatives to leaving his job.

¹³ See sections 29(c)(i) and 29(c)(iv) of the EI Act.

¹⁴ See section 29(c) of the EI Act.

¹⁵ See paragraph 28 of the General Division decision.

¹⁶ See paragraph 26 of the General Division decision.

¹⁷ See paragraphs 36 and 47 of the General Division decision.

¹⁸ See paragraphs 48, 53, and 57 of the General Division decision.

¹⁹ See paragraph 61 of the General Division decision.

[25] The General Division concluded that there was no just cause. The Claimant had reasonable alternatives to leaving his job.²⁰ It said that the Claimant could have done the following instead of leaving his job:

- He could have accepted a position at a different location
- He could have discussed other options with his employer (including whether a leave of absence was an option)
- He could have spoken with his doctor about his concerns and health issues

[26] There is no arguable case that the General Division made an error of fact about any of its key findings. I have reviewed the file and examined the General Division decision.²¹ I did not find any evidence that it might have ignored or misinterpreted.

[27] 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.

[28] The Claimant is trying to reargue his case because he disagrees with the General Division's findings. But the General Division explained why it preferred the evidence it did. I cannot reweigh the evidence in order to come to a different conclusion more favourable to the Claimant. The Appeal Division has a limited role, so I cannot intervene in order to reweigh the evidence about the application of settled legal principles to the facts of the case.²²

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

²⁰ See paragraphs 61, 64, 70, 71 and 73 of the General Division decision.

²¹ 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.

²² See *Garvey v Canada (Attorney General)*, 2018 FCA 118.

Conclusion

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

Solange Losier
Member, Appeal Division