Citation: *HN v Canada Employment Insurance Commission*, 2023 SST 618

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	H. N.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated February 6, 2023 (GE-22-3135)

Tribunal member:	Neil Nawaz
Decision date:	May 19, 2023
File number:	AD-23-264

Decision

[1] Permission to appeal is refused. This appeal will not be going forward.

Overview

[2] The Claimant worked as a truck driver. On December 17, 2021, he left his job and applied for Employment Insurance (EI) benefits. The Canada Employment Insurance Commission (Commission) looked at the Claimant's reasons for leaving. It decided that he had voluntarily left his job without just cause, so it didn't have to pay him EI benefits.

[3] The Claimant appealed the Commission's decision to the Social Security Tribunal's General Division. The General Division held an in-person hearing and agreed with the Commission. It found that the Claimant's employer did not lay him off involuntarily. It found that the Claimant had reasonable alternatives to leaving when he did.

[4] The Claimant is now seeking permission to appeal the General Division's decision to the Appeal Division. He maintains that he did not leave his job voluntarily and alleges that, in coming to its decision, the General Division made the following errors:

- It overlooked evidence that his employer agreed to lay him off because of a shortage of work;
- It wrongly found that, even though winter was beginning, his employer had no shortage of work;
- It disregarded the reality that Service Canada punished him for his honesty; and
- It ignored the fact that his employer was late in submitting his record of employment (ROE).

[5] 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

[6] 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.[1]

An appeal can proceed only if the Appeal Division first grants leave, or permission, to appeal.[2] At this stage, the Appeal Division must be satisfied that the appeal has a reasonable chance of success.[3] This is a fairly easy test to meet, and it means that a claimant must present at least one arguable case.[4]

[7] I have to decide whether any of the Claimant's reasons for appealing fall within one or more of the above-mentioned grounds of appeal and, if so, whether they raise an arguable case.

Analysis

[8] The Claimant comes to the Appeal Division making essentially the same arguments that he made at the General Division. He insists that he and his employer agreed to a temporary lay-off. He maintains that this was because his employer had fewer work hours available in the winter.

[9] I don't see an arguable case for these submissions. First, the Appeal Division does not rehear evidence that has already been heard at the General Division. Second,

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[1] See *Department of Employment and Social Development Act* (DESDA), section 58(1).
[2] See DESDA, sections 56(1) and 58(3).
[3] See DESDA, section 58(2).
[4] See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

the General Division **did** consider the Claimant's evidence but found nothing in the law that could help him.

The Appeal Division does not rehear evidence

[10] 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.

The General Division considered the Claimant's evidence

[11] Whether a claimant has just cause to leave their employment depends on many factors. In this case, the General Division concluded that the Claimant had reasonable alternatives to quitting his job when he did. It came to this conclusion, because it found that the Claimant asked his employer for a lay-off:

- The employer listed "quit" on the Claimant's ROE;
- The employer told the Commission that the Claimant quit because he wanted to return to school; and
- The employer told the Commission that there was no shortage of work.

[12] Based on these findings, the General Division concluded that the Claimant voluntarily left his job. It found that, even if the employer had agreed to a layoff, the Claimant still had reasonable alternatives to leaving. He could have stayed in the job through winter, even with reduced hours, until he was involuntarily laid off. Or he could have stayed until he found a better employment opportunity.

[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 findings. As the General Division rightly noted, having a good reason to leave your job is not the same

thing as having just cause to leave your job when reasonable alternatives are available. The Claimant may not agree with how the General Division considered the evidence, but that is not among the grounds of appeal permitted by the law.

The General Division could not consider the delay in filing the Claimant's ROE

[14] The Claimant criticizes the General Division for failing to consider the fact that his employer prepared and submitted his ROE well after the required five-day deadline. However, as the General Division correctly recognized, that was a matter outside its jurisdiction.[5] Moreover, even if the ROE was filed late, I don't see how the delay affected its accuracy or rendered it less relevant to the essential question in this appeal — whether the Claimant had reasonable alternatives to leaving his employment.

The General Division has the right to weigh evidence as it sees fit

[15] One of the General Division's roles is to establish facts. In doing so, it is entitled to some leeway in how it weighs evidence. The Claimant may believe that his testimony proved his case, but it was just one of several factors that the General Division had to consider.

[16] The Federal Court of Appeal addressed this point in a case called *Simpson*, in which the claimant argued that the tribunal attached too much weight to selected evidence. In dismissing the application for judicial review, the Court held:

> [A]ssigning weight to evidence, whether oral or written, is the province of the trier of fact. Accordingly, a court hearing an appeal or an application for judicial review may not normally substitute its view of the probative value of evidence for that of the tribunal that made the impugned finding of fact.[6]

[5] In paragraph 32 of its decision, the General Division declared that it had no authority interpret the *Employment Standards Act* or any legislation other than the *Employment Insurance Act* and associated regulations.
[6] See *Simpson v Canada (Attorney General)*, 2012 FCA 82.

[17] In this case, the General Division made a full and genuine effort to sort through the relevant evidence and assess its quality. I see no reason to second-guess the General Division's decision to give some items of evidence more weight than others.

Conclusion

[18] For the above reasons, I find that the appeal has no reasonable chance of success. Permission to appeal is refused.

Neil Nawaz
Member, Appeal Division