Citation: *CM v Canada Employment Insurance Commission*, 2023 SST 752

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	C. M.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated May 11, 2023 (GE-23-576)

Tribunal member:	Stephen Bergen
Decision date:	June 10, 2023
File number:	AD-23-518

Decision

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

Overview

[2] C. M. is the Applicant for leave to appeal. He is also the one who claimed Employment Insurance (EI) benefits, so I will refer to him as the Claimant. The Respondent, the Canada Employment Insurance Commission (Commission), disqualified the Claimant from receiving benefits because he did not have just cause for leaving his employment.

[3] When the Claimant asked the Commission to reconsider, it decided not to change its decision. The Claimant appealed the Commission's reconsideration decision to the General Division of the Social Security Tribunal (Tribunal).

[4] The General Division found that the Claimant did not have just cause for voluntarily leaving his employment. Having regard to all the circumstances, it found that the Claimant had reasonable alternatives to leaving. This is the legal test set out in the Employment Insurance Act (EI Act).[1]

[5] The General Division agreed with the Commission and dismissed the Claimant's appeal. It found that the Claimant had reasonable alternatives to leaving.

[6] The Claimant is now asking for leave to appeal the General Division's decision.

[7] I am refusing the application for leave to appeal. The Claimant does not have an arguable case that the General division decision was unfair or that it made an important error of fact. He does not have a reasonable chance of success in his appeal.

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[1] See Section 29(c) of the EI Act.

Issues

[8] Did the General Division act unfairly by failing to call the Claimant's witnesses or investigate the Claimant's side of the story?

[9] Did the General Division make an important error of fact by

a) failing to consider evidence that other people also quit working for the Claimant's employer?

b) failing to consider evidence of racism in the workplace?

c) failing to consider the effect of the Claimant's job on his mental health?

I am not giving the Claimant permission to appeal

[10] For the Claimant's application for leave to appeal to succeed, his reasons for appealing must fit within the "grounds of appeal." To grant this application for leave and permit the appeal process to move forward, I must find that there is a reasonable chance of success on one or more grounds of appeal.

[11] The grounds of appeal identify the kinds of errors that I can consider. I may consider only the following errors:

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.[2]

[2] 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* (DESDA).

[12] The Courts have equated a reasonable chance of success to an "arguable case."[3]

Error of procedural fairness

[13] When the Claimant selected from the grounds of appeal on the application form, he selected only the error considered with an important error of fact. However, he argued the General Division should have investigated and collected more evidence. He said that he had identified witnesses and the General Division should have obtained their evidence. These arguments suggest that the Claimant is concerned with the fairness of the process.

[14] The General Division must make its decision based on the evidence that is before it. This includes the information collected by the Commission's investigation. It also includes the evidence presented to the General Division through documents or by those who testify at the hearing.

[15] The General Division is not an inquiry, and the General Division member is not an investigator. The hearing process presumes that each party to the appeal brings forward the evidence on which it intends to rely. It has no obligation to seek evidence from the Claimant.[4]

[16] The General Division did not act unfairly by failing to contact witnesses identified by the Claimant. It was likewise not unfair that the General Division did not "follow-up." It did not have to verify the Claimant's evidence or investigate leads suggested by the Claimant.

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[3] See *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; *Ingram v Canada (Attorney General)*, 2017 FC 259.
[4] *Grosvenor v. Canada (Attorney General of Canada)*, 2018 FC 36; *T.W. v. Minister of Employment and Social Development*, 2018 SST 58.

Error of fact

[17] To find that the General Division made an important error of fact, I would have to find that it based its decision on a finding of fact that ignored or misunderstood relevant evidence.[5]

[18] The Claimant has suggested that the General Division ignored evidence of three facts. I will now review whether the General Division ignored or misunderstood the evidence of each of these facts.

– Other people quit

[19] The Claimant argued that the General Division ignored evidence of other employees that quit working for his employer.

[20] His Notice of Appeal included documents stating that 8-10 employees quit while the Claimant was working for the employer.[6] He did not say why. The Claimant identified "A." as an employee who asked to be let go, but he did not say why she was let go.[7] He says that the behaviour of one of the other employees was upsetting to A. The Claimant identified one other employee ("L.") who quit. He asserted that L. quit because of the work conditions and behaviour of N, one of the supervisors.[8] The Claimant did not identify any of the other departed employees by name.

[21] Presumably, the reason the Claimant thinks this evidence is important is that it could support his assertion that the workplace was toxic and help the General Division understand just how bad it was. This would be relevant to whether the Claimant could reasonably be expected to continue working while he explored alternatives to leaving.

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[5] This is a paraphrase. Section 58(1)(c) of the DESDA says that this kind of error occurs when the General Division bases its decision "on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it."
[6] See GD2-71.
[7] See GD2-10.
[8] *Ibid.*

[22] However, the Claimant actually said very little about those other employees who left. The evidence before the General Division could not confirm the circumstances under which those other employees left, or their reasons for their leaving.

[23] There is no arguable case that the General Division made an important error of fact by failing to refer to this evidence. The General Division does not need to refer to each and every piece of evidence. It is presumed to have considered all the evidence.[9] The General Division did not need to specifically refer to what the Claimant said about other employees leaving, because this evidence could not have affected its decision.

– **Evidence of racism**

[24] The Claimant also argued that the General Division ignored evidence of N's racism. He had identified one incident in which N, referred to foreigners as "camel jockeys."

[25] The Claimant is correct that General Division did not refer to N's comment. However, the Claimant's evidence does not suggest that his workplace exposed him to this kind of comment on more than one occasion, that he had any reason to believe that N meant the comment to apply to him, or that it affected him personally.

[26] That one of the Claimant's supervisors may have made such a comment could have factored into the Claimant's decision to leave. However, it is not obvious how a single remark that was generally disparaging towards immigrants, affected the Claimant's ability to explore reasonable alternatives to leaving when he did.

[27] There is no arguable case that the General Division made an important error of fact by not referring to this evidence. Again, the General Division does not need to refer to all of the evidence. It does not need to refer to evidence that is irrelevant, or of marginal relevance, to proving those facts on which its decision must rely.

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[9] *Simpson v. Canada (Attorney General),* 2012 FCA 82. (Except evidence that fatally undermines the decision – see *Canada (Attorney General) v. Mendoza,* 2021 FCA 36.

– **Effects on his mental health**

[28] Finally, the Claimant argued that the General Division ignored evidence of how the toxic work environment affected his mental health.

[29] When the Claimant refers to evidence of his mental health, he can only be referring to his own statements. He had asserted that he was mentally "broken down," and that he could not "mentally take anymore".[10] He also provided an email he had sent to "M." at Service Canada, in which he descried his experience at work as mental bullying and abuse, and says that he feels "stress, anxiety, and fear creeping back into my brain and body, " when he thinks of what he went through at work.[11] There was no evidence that the Claimant had a diagnosed mental disorder or that it was caused by his work circumstances.

[30] There is no arguable case that the General Division ignored or misunderstood how the Claimant felt about he was treated at work or how it affected him. The General Division acknowledged that the Claimant felt the workplace was toxic and that he felt stress and anxiety. It accepted that the way in which he was excluded and rejected was "harassment." Because of this, it had to consider workplace harassment as a relevant circumstance, when it decided if the Claimant had reasonable alternatives to leaving.

[31] It is not that the General Division ignored the evidence or misunderstood it. The General Division considered the evidence. When it weighed all the evidence, it concluded that the Claimant had reasonable alternatives to leaving.

[32] I think the Claimant is likely disagreeing with how the General Division weighed the evidence, and with how it decided that the alternatives to leaving were "reasonable."

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[10] See GD2-5
[11] See GD2-8.

[33] However, it is not the place of the Appeal Division to re-weigh or re-evaluate the evidence.[12] Furthermore, I cannot interfere with how the General Division applied a legal test to the facts.

[34] The General Division determined that the Claimant still had "reasonable alternatives" despite his experience of stress and anxiety. To find that the alternatives were "reasonable", it had to apply a legal test to the facts, which included the Claimant's circumstances.

[35] The interpretation of the law as it relates to particular facts, is what is called a "question of mixed fact and law". The Courts have been clear that the Appeal Division does not have the power to review questions of mixed fact and law.[13]

[36] There is no arguable case that the General Division ignored the evidence of harassment or its effects on the Claimant. Likewise, there is no arguable case that the evidence could not rationally support its findings or conclusion.

Other errors of fact

[37] Because the Claimant is unrepresented, I have reviewed the file to see if the General Division may have ignored or misunderstood any other evidence relevant to its findings of fact.[14] I have not found anything that would support an arguable case.

[38] There is no arguable case that the General Division made an error of fact.

[39] The Claimant has no reasonable chance of success.

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[12] *Hideq v. Canada (Attorney General),* 2017 FC 439 *Bergeron v. Canada (Attorney General)*, 2016 FC 220.
[13] *Quadir v. Canada (Attorney General),* 2018 FCA 21.
[14] *Karadeolian v. Canada (Attorney General),* 2016 FC 615.

Conclusion

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

Stephen Bergen
Member, Appeal Division