



Citation: *TT v Canada Employment Insurance Commission*, 2023 SST 762

**Social Security Tribunal of Canada  
Appeal Division**

**Leave to Appeal Decision**

**Applicant:** T. T.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated April 17, 2023  
(GE-22-3369)

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**Tribunal member:** Janet Lew

**Decision date:** June 13, 2023

**File number:** AD-23-368

## Decision

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

## Overview

[2] The Applicant, T. T. (Claimant), is appealing the General Division decision.

[3] The General Division dismissed the Claimant's appeal. It found that she had not shown just cause (a reason the law accepts) for having taken a leave of absence when she did. The General Division found that she had reasonable alternatives to taking a leave. Because the Claimant did not have just cause for taking a leave, she was disqualified from receiving Employment Insurance benefits.

[4] The Claimant argues that the General Division made a legal or factual error when it found that she did not have just cause. The Claimant also argues that there was a breach of the principles of natural justice. She says that it is unfair that she should be expected to repay any benefits that she received. She and her family are already experiencing financial hardship.

[5] Before the Claimant can move ahead with her appeal, I have to decide whether the appeal has a reasonable chance of success. In other words, there has to be an arguable case.<sup>1</sup> If the appeal does not have a reasonable chance of success, this ends the matter.<sup>2</sup>

[6] I am not satisfied that the appeal has a reasonable chance of success. Therefore, I am not giving permission to the Claimant to move ahead with her appeal.

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<sup>1</sup> *Fancy v Canada (Attorney General)*, 2010 FCA 63.

<sup>2</sup> Under section 58(2) of the *Department of Employment Social Development Act* (DESDA), I am required to refuse permission if I am satisfied "that the appeal has no reasonable chance of success."

## Issues

[7] The issues are as follows:

- (a) Is there an arguable case that the General Division made a legal or factual error when it found that the Claimant did not have just cause?
- (b) Is there an arguable case that the General Division made any procedural errors?

## **I am not giving the Claimant permission to appeal**

[8] The Appeal Division must grant permission to appeal unless the appeal has no reasonable chance of success. A reasonable chance of success exists if the General Division possibly made a jurisdictional, procedural, legal, or certain type of factual error.<sup>3</sup>

[9] For factual errors, the General Division had to have based its decision on an error that it made in a perverse or capricious manner, or without regard for the evidence before it.

## **Is there an arguable case that the General Division made a legal or factual error when it found that the Claimant did not have just cause?**

[10] The Claimant argues the General Division made a legal error when it found that she did not have just cause. She argues that she had just cause because working conditions constituted a danger to health or safety. In particular, she argues that remaining at work would have increased the risk of exposure to COVID-19 for her and her family.

[11] The Claimant also states that she suffers from attention-deficit hyperactivity disorder (ADHD). She says that it affects her ability to find a job or focus on school and work simultaneously. She explains that this is why she did not have any reasonable

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<sup>3</sup> See section 58(1) of the DESDA.

alternatives to taking a leave. She says she could not continue working and look for other work at the same time because of her medical condition.

[12] The Claimant included a medical note from her family doctor. Her doctor confirms that the Claimant has ADHD. He confirms also that the Claimant needs accommodations “to be successful in her academic studies.” These include having extra time for tests and assignments, a break during tests, and a quiet setting to write tests.<sup>4</sup>

[13] The medical note does not say anything about how the Claimant’s medical condition affects her ability to find work or to be able to school and look for work at the same time. The medical note does not say what the Claimant says it does about her ability to look for work.

[14] But, even if the medical note had supported the Claimant, I am not allowed to consider it. The medical note represents new evidence that the General Division did not have. The Appeal Division generally cannot accept new evidence unless it provides background information.<sup>5</sup> Such is not the case here.

[15] The General Division considered section 29(c)(iv) of the *Employment Insurance Act* to see whether it applied to the Claimant’s circumstances. Under that section, a claimant has just cause for taking a leave of absence if they did not have any reasonable alternatives to taking leave, having regard to “working conditions that constitute a danger to health or safety.”

[16] The General Division correctly identified the appropriate section of the *Employment Insurance Act*. It then determined whether the Claimant’s circumstances fell into the section. The General Division examined the facts to assess whether the Claimant’s working conditions were a danger to health or safety.

[17] The General Division noted the Claimant’s evidence that her mother is immunocompromised. The Claimant worried about making her mother sick. The General Division also noted that the Claimant was fearful of COVID-19. This is the

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<sup>4</sup> Doctor’s medical note dated March 28, 2023, at AD 1C-2.

<sup>5</sup> *Sibbald v Canada (Attorney General)*, 2022 FCA 157.

same evidence that the Claimant now raises before me. The Claimant does not otherwise challenge any of the General Division's findings of fact. The General Division's findings of fact are consistent with the evidence before it.

[18] Essentially, the Claimant is asking me to re-assess the evidence and come to my own assessment. But that is not a basis upon which I can give permission to the Claimant to move ahead with her appeal. The *Department of Employment and Social Development Act* limits what I can do. It does not allow for a reassessment of the evidence at this stage of the proceedings.

[19] I am not satisfied that there is an arguable case that the General Division made a legal or factual error when it found that the Claimant did not have just cause for taking a leave of absence.

**Is there an arguable case that the General Division made any procedural errors?**

[20] The Claimant argues the General Division did not follow procedural fairness. She says that the outcome—having to repay benefits—is unfair. She says that she and her family are already struggling. If she has to repay benefits, then she will be unable to contribute to household expenses such as rent and bills.

[21] However, these arguments do not deal with whether the process was fair at the General Division. For instance, they do not suggest that the General Division member failed to give the Claimant adequate notice of the hearing, that it did not give her adequate disclosure of any documents, or that it did anything that affected the Claimant's right to be heard or to present her case.

[22] The Claimant also does not suggest that the member was biased or had prejudged the appeal.

[23] As the Claimant's arguments do not address whether the process was fair, I am not satisfied that the appeal has a reasonable chance of success on this point.

## **The Claimant's overpayment**

[24] The Claimant has an overpayment because she received Employment Insurance benefits that she was not entitled to receive. She states that she and her family are experiencing financial difficulties. She says having to repay the benefits will compound their difficulties.

[25] I do not have any authority to waive or reduce any of the overpayment. But the Claimant can refer to her Notice of Debt. It outlines her options and provides contact information.

[26] If she has not already done so, the Claimant can contact Canada Revenue Agency (CRA) to seek relief or ask about any repayment arrangements. This could include CRA assessing her financial situation and then making recommendations to the Respondent, the Canada Employment Insurance Commission, to write off or reduce the overpayment.

## **Conclusion**

[27] I am not satisfied that the appeal has a reasonable chance of success. I am refusing permission to appeal. This means that the appeal will not go ahead.

Janet Lew  
Member, Appeal Division