



[TRANSLATION]

Citation: *KL v Canada Employment Insurance Commission*, 2023 SST 909

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: K. L.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated
May 4, 2023 (GE-23-613)

Tribunal member: Pierre Lafontaine

Decision date: July 13, 2023

File number: AD-23-436

Decision

[1] Permission to appeal is refused. The appeal will not proceed on the issue of voluntary leaving.

Overview

[2] The Applicant (Claimant) established an initial claim for EI regular benefits effective October 3, 2021. Upon reconsideration on September 9, 2022, the Respondent (Commission) found that the Claimant voluntarily left her job without just cause. The Claimant requested it to reconsider her application. The Commission upheld its initial decision. The Claimant appealed to the General Division.

[3] The General Division found that the Claimant voluntarily left her job and that she did not have just cause for leaving when she did.

[4] The Claimant argues that the General Division made an important error of fact. The Claimant says that she never resigned and there is nothing in the collective agreement that says she had to be available on a specific date or during a specific time slot.

[5] I must decide whether there is an arguable case that the General Division made a reviewable error based on which the appeal has a reasonable chance of success.

[6] I am refusing permission to appeal because the Claimant has not raised a ground of appeal based on which the appeal has a reasonable chance of success.

Issue

[7] Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

Analysis

[8] Section 58(1) of the *Department of Employment and Social Development Act* specifies the only grounds of appeal of a General Division decision. These reviewable errors are the following:

1. The General Division hearing process was not fair in some way.
2. The General Division did not decide an issue it should have decided. Or, it decided something it did not have the power to decide.
3. The General Division based its decision on an important error of fact.
4. The General Division made an error of law when making its decision.

[9] An application for permission to appeal is a preliminary step to a hearing on the merits. It is an initial hurdle for the Claimant to meet, but it is lower than the one that must be met at the hearing of the appeal on the merits. At the permission to appeal stage, the Claimant does not have to prove her case; she must instead establish that the appeal has a reasonable chance of success. In other words, she must show that there is arguably a reviewable error based on which the appeal might succeed.

[10] I will give permission to appeal if I am satisfied that at least one of the Claimant's stated grounds of appeal gives the appeal a reasonable chance of success.

Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

[11] The Claimant argues that the General Division made an important error of fact. The Claimant argues that she never resigned and that there is nothing in the collective agreement that says she had to be available on a specific date or during a specific time slot.

[12] According to the agreement the Claimant submitted, a part-time employee has to be available for work in July and August. It provides for a mandatory minimum availability.¹

[13] The Claimant was informed several times that if she refused to perform the work requested, the employer would have to regard her as having abandoned her job. The evidence shows that the Claimant's separation from employment was a direct result of her not responding to the employer.

[14] The Claimant's inaction following her employer's request shows that she voluntarily left her job. The Claimant had the choice of accepting the assignment and continuing to work for her employer.

[15] As the General Division pointed out, the Claimant did not exhaust her options by not answering the head of human resources and by not working as of July 10, 2022. She could also have disputed her assignment or have requested leave.

[16] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for permission to appeal, I am of the view that the appeal has no reasonable chance of success. The Claimant has not raised any issue that could justify setting aside the decision under review.

Conclusion

[17] Permission to appeal is refused. The appeal will not proceed on the issue of voluntary leaving.

Pierre Lafontaine
Member, Appeal Division

¹ See section 8.30 of the collective agreement, GD2-53.