



[TRANSLATION]

Citation: *RC v Canada Employment Insurance Commission*, 2023 SST 943

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

**Applicant:** R. C.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated  
May 10, 2023 (GE-23-731)

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**Tribunal member:** Pierre Lafontaine

**Decision date:** July 20, 2023

**File number:** AD-23-439

## **Decision**

[1] Permission to appeal is refused. The appeal will not proceed.

## **Overview**

[2] The Applicant (Claimant) was a truck driver for a transportation business. In May 2022, he stopped working because of back pain. On June 16, 2022, he left his job because his physical condition prevented him from driving the trucks provided by the employer. He applied for Employment Insurance (EI) benefits.

[3] The Respondent (Commission) denied him benefits, since he voluntarily left his job without just cause. He asked the Commission to reconsider, but it upheld its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[4] The General Division found that the Claimant voluntarily left his job. It found that he wanted a new truck and was not happy with the one provided by the employer. The General Division found that the Claimant could have had a doctor certify his physical limitations with certain trucks. The General Division decided that the Claimant did not have just cause for leaving his job.

[5] The Claimant seeks permission from the Appeal Division to appeal the General Division decision. He argues that he tried four times to meet with his supervisor to discuss the situation but was unsuccessful. He says that he never asked for a new truck. He wanted a retractable-axle truck.

[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 his case; he must instead establish that the appeal has a reasonable chance of success. In other words, he 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 he tried four times to meet with his supervisor to discuss the situation but was unsuccessful. He says that he never asked for a new truck. He wanted a retractable-axle truck.

[12] The issue before the General Division was whether the Claimant voluntarily left his job without just cause.<sup>1</sup> This needs to be determined based on the circumstances that existed when the Claimant quit.

[13] The General Division correctly pointed out that it was up to the Claimant to prove, on a balance of probabilities, that he had just cause to leave.

[14] The General Division found that the Claimant voluntarily left his job. It found that he wanted a new truck and was not happy with the one provided by the employer. The General Division found that there was no medical evidence of his physical limitations with certain trucks.

[15] During an interview with the Commission, the Claimant said that others had gotten new trucks before him despite his seniority. He assumed that his employer refused to give him a new truck, so he chose to leave his job.<sup>2</sup>

[16] The employer said that its trucks were replaced every five years and that they were not assigned based on seniority; priority was given to those employees who took better care of them. The employer said that the Claimant's back pain had nothing to do with his job and that the CNESST [Quebec's labour standards commission] had denied his claim for compensation.<sup>3</sup>

[17] The General Division found that the Claimant could have gotten a medical note supporting his physical limitations. Based on the evidence he had provided, it decided that he did not have just cause under the law for leaving his job.

[18] Another reasonable alternative would have been for the Claimant to look for a job better suited to his needs before quitting.

[19] In my view, the General Division correctly stated the legal test for voluntary leaving. It applied this test to the facts of the case and looked at whether, after

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<sup>1</sup> In accordance with sections 29 and 30 of the *Employment Insurance Act*.

<sup>2</sup> See GD3-19.

<sup>3</sup> See GD3-22.

considering all of the circumstances, the Claimant had no reasonable alternative to leaving his job.

[20] An appeal to the Appeal Division is not an opportunity for a claimant to present their case again and hope for a different outcome. I find that the Claimant has not raised any question of fact, law, or jurisdiction concerning his voluntary leaving that could justify setting aside the decision under review.

[21] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for permission to appeal, I have no choice but to find that the appeal has no reasonable chance of success.

## **Conclusion**

[22] Permission to appeal is refused. The appeal will not proceed.

Pierre Lafontaine  
Member, Appeal Division