



[TRANSLATION]

Citation: *MG v Canada Employment Insurance Commission*, 2023 SST 950

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: M. G.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated
April 17, 2023(GE-22-3547)

Tribunal member: Pierre Lafontaine

Decision date: July 24, 2023

File number: AD-23-447

Decision

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

Overview

[2] The Applicant (Claimant) stopped working on December 16, 2021, and applied for Employment Insurance (EI) benefits. The Respondent (Commission) decided that she voluntarily left (or chose to quit) her job without just cause. As a result, the Commission could not pay her benefits. On reconsideration, the Commission upheld its initial decision. The Claimant appealed to the General Division.

[3] The General Division found that the Claimant, in agreeing to reduce her hours, knew that she was doing so as a pre-retirement and that she had to formally retire after six months. It found that the Claimant's choices led to the end of her employment. The General Division found that the Claimant had the option of remaining at her job without reducing her hours of work. It found that the Claimant did not have just cause for voluntarily leaving her job within the meaning of the law.

[4] The Claimant now seeks permission from the Appeal Division to appeal the General Division decision. She argues that she lost her job because of the lack of flexibility in her employer's collective agreement. She argues that she was discriminated against because of her union membership.

Issue

[5] Did the General Division make a reviewable error based on which the appeal has a reasonable chance of success?

Analysis

[6] 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.

[7] 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 on 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.

[8] 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.

[9] The Claimant argues that she lost her job because of the lack of flexibility in her employer's collective agreement. She argues that she was discriminated against because of her union membership.

[10] The evidence before the General Division shows that the Claimant asked for a reduction in hours because she wanted to work four days per week. The employer explained to her that, if she wanted to, she had to go into pre-retirement. She did this through her union. The Claimant then wanted to continue working. The employer told

her that she no longer had a choice to retire because of her initial choice to go into pre-retirement.

[11] As the General Division noted, the Claimant chose to agree to reduce her hours knowing that, in making that choice, she would have to retire. She applied through her union. She did not have to ask for a reduction in hours. She had the option of remaining at her job without reducing her hours. There is nothing in the file to support a finding that she was discriminated against because of her union membership.

[12] I am of the view that the evidence supports, on a balance of probabilities, the General Division's finding that the Claimant did not have just cause for leaving her job.

[13] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for permission to appeal, I find 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

[14] Permission to appeal is not granted. This means that the appeal will not proceed.

Pierre Lafontaine
Member, Appeal Division