



Citation: *GF v Canada Employment Insurance Commission*, 2023 SST 829

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

# **Leave to Appeal Decision**

**Applicant:** G. F.  
**Representative:** S. C.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated January 6, 2023  
(GE-22-3267)

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**Tribunal member:** Candace R. Salmon

**Decision date:** June 23, 2023  
**File number:** AD-23-139

## **Decision**

[1] I am refusing leave (permission) to appeal because the Claimant doesn't have an arguable case. The appeal will not proceed.

## **Overview**

[2] G. F. is the Claimant. He quit his job in British Columbia (BC) to relocate to Nova Scotia (NS), where his partner lives. He applied for Employment Insurance (EI) regular benefits. The Canada Employment Insurance Commission (Commission) decided that he did not qualify for benefits, because he voluntarily left his job without just cause.

[3] The Claimant appealed to the Tribunal's General Division. The General Division dismissed the appeal.

[4] The Claimant wants to appeal the General Division decision to the Appeal Division. He needs permission for the appeal to move forward.

[5] I am refusing permission to appeal because the Claimant's appeal has no reasonable chance of success.

## **Issues**

[6] Is there an arguable case that the General Division based its decision on an important mistake about the Claimant's intention to marry his partner?

[7] Is there an arguable case that the General Division based its decision on an important mistake about the Claimant's job search efforts?

[8] Are there any other reasons for giving the Claimant permission to appeal?

## Analysis

### The test for getting permission to appeal

[9] An appeal can only proceed if the Appeal Division gives permission to appeal.<sup>1</sup> I must be satisfied that the appeal has a reasonable chance of success.<sup>2</sup> This means that there must be some arguable ground upon which the appeal might succeed.<sup>3</sup>

[10] To meet this legal test, the Claimant must establish that the General Division may have made an error recognized by the law.<sup>4</sup> If the Claimant's arguments do not deal with one of these specific errors, the appeal has no reasonable chance of success and I must refuse permission to appeal.<sup>5</sup>

### The Claimant is arguing that the General Division based its decision on important mistakes about the facts of the case

[11] The Claimant submits that the General Division made an error of jurisdiction. An error of jurisdiction means that the General Division didn't decide an issue that it had to decide or decided an issue that it didn't have the authority to decide.

[12] There is no arguable case that the General Division made an error of jurisdiction. The Claimant did not say how the General Division failed to consider an issue in his case, or that the General Division decided something it didn't have the authority to decide.

[13] Instead, the Claimant is arguing that the General Division based its decision on important mistakes about the facts of his case. If there is a mistake, I can't intervene just because the General Division made a mistake about a minor fact. Instead, the law only allows me to intervene if the General Division, "based its decision on an erroneous

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<sup>1</sup> The *Department of Employment and Social Development Act* (DESD Act) at section 58(1) says that I must refuse leave to appeal if I find the "appeal has no reasonable chance of success." This means that I must refuse permission for the appeal to move forward if I find there isn't an arguable case (*Fancy v Canada (Attorney General)*, 2010 FCA 63 at paragraphs 2 and 3). See also section 56(1) of the DESD Act.

<sup>2</sup> See section 58(2) of the DESD Act.

<sup>3</sup> See, for example, *Osaj v Canada (Attorney General)*, 2016 FC 115.

<sup>4</sup> The relevant errors, formally known as "grounds of appeal," are listed under section 58(1) of the DESD Act. These errors are also explained on the Notice of Appeal to the Appeal Division. See AD1B-3.

<sup>5</sup> This is the legal test described in section 58(2) of the DESD Act.

finding of fact that it made in a perverse or capricious manner or without regard for the material before it.<sup>6</sup> A perverse or capricious finding of fact is one where the finding contradicts or isn't supported by the evidence in the appeal.<sup>7</sup> This involves considering the following questions:

- Does the evidence squarely contradict one of the General Division's key findings?
- Is there no evidence that could rationally support one of the General Division's key findings?
- Did the General Division overlook critical evidence that contradicts one of its key findings?

[14] None of the Claimant's allegations meet the criteria above in a way that would allow me to intervene in his case.

**There's no arguable case that the General Division based its decision on an important mistake about the Claimant's intention to marry his partner**

[15] The General Division decision says, "when the Claimant left his job, he and his now fiancée did not have immediate plans to marry."<sup>8</sup> The Claimant argues that the General Division made a mistake by saying he and his partner did not have plans to marry at the time he relocated to Nova Scotia. The representative writes that when she and the Claimant, "got together in October 2021," they discussed wanting to get married but agreed to wait until he moved.<sup>9</sup> She submitted the General Division finding was "speculative."<sup>10</sup>

[16] The Claimant told the Commission that he quit his job to follow his partner to another location.<sup>11</sup> He said that they had been in a long-distance relationship since

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<sup>6</sup> See section 58(1) of the DESD Act.

<sup>7</sup> See *Garvey v Canada (Attorney General)*, 2018 FCA 118 at paragraph 6.

<sup>8</sup> See General Division decision at paragraph 20.

<sup>9</sup> See page AD1B-2.

<sup>10</sup> The Claimant confirmed at the hearing that the relationship started in October 2021, and that he and his partner weren't living together until May 2022. See General Division hearing recording at 45:55.

<sup>11</sup> See page GD3-7.

September 2021, were not married at the time he quit his job, had lived together for less than a year, and did not have a definite date set for getting married.<sup>12</sup>

[17] At the hearing on December 13, 2022, the Claimant said that he and his partner “didn’t have a set date yet.”<sup>13</sup> The representative explained that they became engaged in October 2022, but delayed setting a date for the marriage until after her daughter got married.<sup>14</sup>

[18] The Claimant’s argument has no reasonable chance of success. The General Division’s findings are clearly supported by the evidence. Plus, the General Division did not base its decision on the Claimant’s intention to marry his partner. In other words, the Claimant’s arguments do not meet the criteria needed for me to intervene in this case based on an error of fact.

[19] There is no arguable case that the General Division made a mistake relating to these facts.

**There’s no arguable case that the General Division based its decision on an important mistake about the Claimant’s job search efforts**

[20] The General Division decision says that the Claimant had reasonable alternatives to leaving his job, including “making an earnest effort to seek employment” in NS before leaving BC. The General Division adds that while the Claimant, “had some conversations...he did not apply for any jobs in [NS] prior to leaving work.”<sup>15</sup> The Claimant argues that he tried to get a job before moving to NS, and that he met the criteria for seeking suitable employment.<sup>16</sup>

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<sup>12</sup> See pages GD3-6 through GD3-9. The Claimant confirmed this information on the hearing recording at 27:10 and 27:23. At 27:44 the representative confirmed she and the Claimant became engaged on October 26, 2022. At 28:00 the representative confirmed no arrangements had yet been made for a marriage ceremony.

<sup>13</sup> See General Division hearing recording at 27:35.

<sup>14</sup> See General Division hearing recording at 28:08.

<sup>15</sup> See General Division decision at paragraph 23.

<sup>16</sup> See page AD1B-2.

[21] The General Division considered all the Claimant's efforts to find work in NS but found them insufficient.<sup>17</sup> Specifically, the General Division considered the Claimant's efforts to find a job, including where he searched for jobs, how he searched for jobs, and how many jobs he applied to before he quit his position.<sup>18</sup> It noted the Claimant's efforts to find work with a meat producer in NS before he quit his job in BC, and said that he checked with another retailer as well and considered starting his own business. He also looked for jobs on the Job Bank and Career Beacon websites, created a resume, and asked friends and family if they knew of any available work, but he did not apply for any jobs in NS before he quit his position in BC and had not been promised a job by any NS employers.<sup>19</sup>

[22] The Claimant's argument has no reasonable chance of success because the General Division's conclusions are supported by the facts. The General Division was clearly aware of the Claimant's efforts but found that he did not have just cause for quitting his job. It does not appear to have overlooked any critical evidence that could contradict its decision.

[23] There is no arguable case that the General Division made a mistake relating to these facts.

## **There are no other reasons for giving the Claimant permission to appeal**

### **I don't have jurisdiction over errors of mixed fact and law**

[24] The representative argues that the Claimant met all the "criteria considered suitable for seeking employment prior to leaving a job."<sup>20</sup> The list of criteria is taken from the Commission's website, but is taken out of context. The information from the website

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<sup>17</sup> See General Division decision at paragraphs 16, 17, and 23.

<sup>18</sup> See General Division hearing recording at 35:55. The Claimant said that he didn't send out any resumes before he quit his job in BC and looked at jobs online but didn't apply for anything. He also said that when he was in NS, he networked with his partner's friends to see if there were any jobs available. The General Division considered all this evidence. See General Division decision at paragraphs 16 to 17 and 22 to 23.

<sup>19</sup> See General Division decision at paragraphs 16 and 17.

<sup>20</sup> See page AD01B-2.

reflects the criteria to determine suitable employment for the purposes of availability.<sup>21</sup> Availability is not an issue in this case.

[25] The General Division's questions at the hearing and reasons in the decision show that it considered the Claimant's job search and found that finding a job in NS before he quit his position in BC was a reasonable alternative to quitting when he did.

[26] I cannot consider whether there were errors in how the General Division applied the law to the specific facts before it.<sup>22</sup> This is called an error of mixed fact and law.

[27] The Claimant is unhappy with how the General Division weighed the evidence about his job search and the outcome of the decision. However, this complaint relates to a mixed error of fact and law, which is not one of the ones that I can consider.<sup>23</sup>

#### **The General Division didn't misinterpret or ignore relevant evidence**

[28] In addition to the Claimant's arguments, I also reviewed the documents in the file, examined the decision under appeal, and satisfied myself that the General Division did not misinterpret or fail to properly consider any relevant evidence.<sup>24</sup>

[29] The Tribunal must follow the law, including the *Department of Employment and Social Development Act*. It provides rules for appeals to the Appeal Division. The Appeal Division does not provide an opportunity for the parties to re-argue their case. It determines whether the General Division made an error under the law.

[30] There is no arguable case that the General Division made a reviewable error in this case.

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<sup>21</sup> The list provided by the Claimant reflects the criteria in the *Employment Insurance Regulations* at section 9.001. These criteria specifically relate to section 50(8) of the *Employment Insurance Act*, which is about proving suitable employment for the purpose of proving availability. It is not a section under appeal.

<sup>22</sup> See *Quadir v Canada (Attorney General)*, 2018 FCA 21.

<sup>23</sup> See section 58(1) of the DESD Act.

<sup>24</sup> See *Karadeolian v Canada (Attorney General)*, 2016 FC 165 at paragraph 10.

## **Conclusion**

[31] This appeal has no reasonable chance of success. For that reason, I'm refusing permission to appeal.

[32] This means that the appeal will not proceed.

Candace R. Salmon  
Member, Appeal Division