



[TRANSLATION]

Citation: *SG v Canada Employment Insurance Commission*, 2023 SST 999

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

# **Leave to Appeal Decision**

**Applicant:** S. G.  
**Representative:** Jérémie Dhavernas

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated  
April 26, 2023 (GE-22-4117)

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**Tribunal member:** Pierre Lafontaine

**Decision date:** July 28, 2023  
**File number:** AD-23-558

## **Decision**

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

## **Overview**

[2] The Applicant (Claimant) quit her job and applied for Employment Insurance (EI) benefits. The Respondent (Commission) looked at the Claimant's reasons for leaving her job. It found that she voluntarily left (or chose to quit) her job without just cause, so it was not able to pay her benefits.

[3] The Claimant asked the Commission to reconsider, but it upheld its initial decision. She appealed the reconsideration decision to the General Division.

[4] The General Division found that the Claimant chose to leave her job because she was unable to pick up her child from daycare on weekday evenings. The General Division found that the Claimant could have looked for another job before leaving. It found that the Claimant could also have looked for another job with her employer, or looked for another daycare or babysitter, or taken an unpaid leave of absence to rethink about how her family was organized.

[5] The Claimant seeks permission from the Appeal Division to appeal the General Division decision. She argues that the General Division made an error of fact and law when it found that she did not have just cause for leaving her job.

[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 that 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 on the hearing of the appeal on the merits. At the permission to appeal stage, the Claimant does not have to prove her case but must establish that her appeal has a reasonable chance of success. In other words, that there is arguably some reviewable error upon which the appeal might succeed.

[10] I will grant 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 there were changes to her duties even though she accepted the employer's change of position. The employer later refused the proposed accommodations that would allow her to meet her family obligations.

[12] The Claimant argues that the General Division had to analyze this factor as part of the Claimant's search for a reasonable alternative to voluntary leaving. She also argues that the General Division ignored her testimony that her new schedule was

incompatible with the childcare options available to her. She argues that an unpaid leave of absence would not have made a difference in her situation.

[13] The issue before the General Division was whether the Claimant voluntarily left her job without just cause. This has to be determined based on the circumstances that existed when she left.

[14] The General Division found that the Claimant voluntarily left her job. It found that the Claimant accepted her employer's offer to return to her former position as a quality agent, from 9 a.m. to 5 p.m., with a 25% salary increase. After accepting the offer, the Claimant then asked the employer to work from 8 a.m. to 4 a.m. to pick up her child from daycare before closing. The employer refused, given the needs of the position. She resigned by email on June 7, 2022, two days after starting the new position.

[15] The General Division found that the Claimant had reasonable alternatives to leaving her job. The General Division found that she could have looked for another job before leaving her job.

[16] The employer told the Commission that it had notified the Claimant two weeks before the change of position so that she could make arrangements before the new schedule started.<sup>1</sup> The Claimant confirmed that she did not look for a suitable job before leaving.<sup>2</sup>

[17] Based on the evidence, the General Division found that the Claimant did not have just cause under the law for leaving her job.

[18] I am of the view that 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 considering all of the circumstances, the Claimant had no reasonable alternative to leaving her job.

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<sup>1</sup> See GD3-20.

<sup>2</sup> See GD3-33.

[19] The Claimant agreed to return to her previous position as a quality agent from 9 a.m. to 5 p.m., with a 25% salary increase, and her new hours impacted her family commitments. In the Claimant's eyes, this may have been just cause for quitting. But, the law and the case law about just cause require more than that.

[20] The Claimant, who accepted or acquiesced in the change to her work duties when she knew about her family obligations, and then decided to leave, cannot rely on a change in her work duties and the employer's refusal to accommodate her to justify her leaving. Also, the Claimant had to, at the very least, try to find another job before the start of her new position which she did not do.

[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