



[TRANSLATION]

Citation: *IM v Canada Employment Insurance Commission*, 2023 SST 1025

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

# **Leave to Appeal Decision**

**Applicant:** I. M.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated  
May 5, 2023(GE-22-4299)

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**Tribunal member:** Pierre Lafontaine

**Decision date:** August 1, 2023

**File number:** AD-23-588

## Decision

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

## Overview

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

[3] The General Division found that the Claimant had chosen to leave her job because she feared the return of a former employee (P. B.) who had previously been violent toward a co-worker (M. M.). The General Division found that the Claimant's health and safety were not at risk. It found that the Claimant could have spoken with her employer about the situation and looked for another job before leaving. The General Division found that the Claimant did not have just cause for leaving her job.

[4] The Claimant seeks permission from the Appeal Division to appeal the General Division decision. The Claimant argues that she disagrees with the General Division's interpretation of the law. Hiring P. B., a former employee, was a working condition that was dangerous to her health and safety. The Claimant argues that the reasonable alternatives noted by the General Division were not possible. She could not work with the employee while waiting to look for a job, and there was no point in speaking with the employer who had already decided to hire him.

[5] 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

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

## Preliminary remarks

[7] It is well established that I have to consider only the evidence that was before the General Division in deciding the application for permission to appeal. This is because an appeal to the Appeal Division is not a new opportunity to present evidence. The powers of the Appeal Division are limited by law.<sup>1</sup>

## 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.

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<sup>1</sup> *Sibbald v Canada (Attorney General)*, 2022 FCA 157.

**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 she disagrees with the General Division's interpretation of the law. The hiring of the former employee was a working condition that was dangerous to her health and safety. The Claimant argues that the reasonable alternatives identified by the General Division were not possible. She could not work with the employee P. B. while waiting to look for a job, and there was no point in speaking with the employer who had already decided to hire him.

[12] The issue before the General Division was whether the Claimant had voluntarily left her job without just cause.<sup>2</sup> This needs to be determined based on the circumstances that existed when she quit.

[13] The General Division found that the Claimant's health and safety were not in danger. It found that the Claimant could have spoken with her employer about the situation and looked for another job before leaving. The General Division found that the Claimant did not have just cause for leaving.

[14] The Claimant quit her job based on an event that happened 16 years ago involving another employee, M. M. The evidence shows that the incident did not involve her and that the employee in question, M. M., stayed at work despite P. B.'s return. The evidence does not support the Claimant's position that hiring former employee P. B. was a working condition that was dangerous to her health and safety.

[15] As the General Division pointed out, the Claimant had to try to speak with her employer about the situation and look for another job before leaving.

[16] The General Division found from the evidence that the Claimant did not have just cause for leaving her job under the law.

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<sup>2</sup> In accordance with sections 29 and 30 of the *Employment Insurance Act*.

[17] 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.

[18] The Claimant clearly disagreed with her employer rehiring P. B. But, there were reasonable alternatives to leaving her job when she did.

[19] 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**

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

Pierre Lafontaine  
Member, Appeal Division