



Citation: *CR v Canada Employment Insurance Commission*, 2023 SST 979

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: C. R.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated May 16, 2023
(GE-22-4171)

Tribunal member: Stephen Bergen

Decision date: **July 25, 2023**

File number: AD-23-578

Decision

[1] I am refusing leave (permission) to appeal. The appeal will not proceed.

Overview

[2] C. R. is the Applicant, but I will refer to him as the Claimant. He left his job on June 28, 2022, and applied for Employment Insurance (EI) regular benefits. The Canada Employment Insurance Commission (Commission) refused to pay benefits because it determined that the Claimant did not have just cause for leaving his job.

[3] The Claimant asked the Commission to reconsider but it would not change its decision. He then appealed the Commission's decision to the General Division.

[4] The General Division dismissed the appeal. It agreed with the Commission that the Claimant had reasonable alternatives to leaving his employment. The Claimant is now asking for leave to appeal the General Division decision to the appeal division.

[5] I am denying leave to appeal. The Claimant has not raised an arguable case that the General Division made an important error of fact.

Issues

[6] Is there an arguable case that the General Division make an important error of fact about the Claimant's physical capacity to continue to work.

Analysis

General Principles

[7] For the Claimant's application for leave to appeal to succeed, his reasons for appealing would have to fit within the "grounds of appeal." To grant this application for leave and permit the appeal process to move forward, I must find that there is a reasonable chance of success on one or more grounds of appeal.

[8] The grounds of appeal identify the kinds of errors that I can consider. I may consider only the following errors:

- a) The General Division hearing process was not fair in some way.
- b) 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 (error of jurisdiction).
- c) The General Division based its decision on an important error of fact.
- d) The General Division made an error of law when making its decision.¹

[9] The Courts have equated a reasonable chance of success to an “arguable case.”²

Important error of fact

[10] The Claimant sent the Appeal Division a Notice of Appeal form, in which he stated that he had to leave his job because of health problems. He also said that the employer did not accommodate his health problems.

[11] The Appeal Division wrote the Claimant on June 15, 2023, to explain that the Claimant would need to show the Appeal Division how the General Division made an error. The Appeal Division’s letter also outlined the types of errors that it could consider.

[12] The Claimant responded on June 18, 2023. In his response, the Claimant stated that the General Division “made an important error of fact with [his] work due to an episode of sickness.” He said that his employer did not care about his health condition and would not accommodate him. However, he also said that his medical issues did not affect his ability to perform his duties.

[13] There is no arguable case that the General Division made an important error of fact.

¹ This is a plain language version of the grounds of appeal. The full text is in section 58(1) of the *Department of Employment and Social Development Act* (DESDA).

² See *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; and *Ingram v Canada (Attorney General)*, 2017 FC 259.

[14] The Claimant asserts that the General Division made an error of fact, but he has not clearly described the error.

[15] The Claimant may be arguing that the General Division did not fully appreciate that his employer refused to accommodate him. However, there is no arguable case that the General Division misunderstood this evidence.

[16] The General Division noted that the Commission argued that the Claimant could have asked for modified duties, but it did **not** accept that the employer could have accommodated the Claimant. In fact, the General Division seems to have agreed that the employer could not offer modified duties.³

[17] On the other hand, I could read the Claimant's explanation for his appeal as an argument that the General Division did not understand evidence that he could have continued working at his job despite his medical issues.

[18] I have not found any evidence that was before the General Division suggesting that the Claimant believed he was still physically capable of working despite his health issues.⁴ But, even if there was evidence, this would not help him to show that the General Division made an error. For the General Division to make an error of fact, its decision must rely on its misunderstanding of the evidence in some way.

[19] The Claimant left his job because his duties were painful, and his employer would not offer him accommodated duties. The law says that a claimant has just cause for leaving their employment when they have no reasonable alternative to leaving in the circumstances.⁵ The General Division found that the Claimant could have seen a doctor and sought a diagnosis before quitting, and that he could have asked for a leave of absence.

³ See para 25 of the General Division decision.

⁴ The Claimant actually testified that he "can't do this job". Listen to the audio recording of General Division hearing at time stamp 00:13:10.

⁵ See section 29(c) of the EI Act.

[20] If the General Division had considered evidence that the Claimant could still work at his regular duties, this would not have affected its conclusion that he had reasonable alternatives to leaving.

Conclusion

[21] I am refusing leave to appeal. This means that the appeal will not proceed.

Stephen Bergen
Member, Appeal Division