



[TRANSLATION]

Citation: *SD v Canada Employment Insurance Commission*, 2023 SST 1186

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: S. D.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated May 25, 2023
(GE-22-4085)

Tribunal member: Pierre Lafontaine

Decision date: August 31, 2023

File number: AD-23-613

Decision

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

Overview

[2] The Applicant (Claimant) worked at a factory in New Brunswick. The boss told staff members that they would be off work for two weeks. He asked them to choose the dates to be off work. Staff chose the dates from July 17, 2022, to July 30, 2022.

[3] The Claimant contacted her supervisor to ask whether she could have three and a half additional days off. She wanted to be able to visit her brother who came from Abitibi-Témiscamingue. She had not seen him since the pandemic started. She never got a clear answer about whether she could take those days off. She decided to take the days without her employer's permission. When she returned, the employer told her that she had left her job by not returning to work.

[4] The Respondent (Commission) decided that the Claimant left her job without just cause. On reconsideration, the Commission upheld its initial decision. The Claimant appealed the Commission's reconsideration decision to the General Division.

[5] The General Division found that the Claimant did not leave her job. It found that the Claimant took a leave of absence without her employer's consent. The General Division found that the Claimant lost her job because of misconduct.

[6] The Claimant is asking for permission to appeal the General Division's decision. She argues that she never left her job. The employer prevented her from working when she returned from her leave. She considers that she was let go.

[7] I have to decide whether there is an arguable case that the General Division made a reviewable error that has a reasonable chance of success on appeal.

[8] 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

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

Analysis

[10] 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.

[11] 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 at 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.

[12] 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.

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

[13] The Claimant argues that she never left her job. The employer prevented her from working when she returned from her leave. She considers that she was let go.

[14] The General Division found that the Claimant did not voluntarily leave her job, but that she lost her job because of misconduct.

[15] The Federal Court of Appeal teaches us that it does not matter whether the employer or the employee took the initiative to end the employment relationship when the employment was terminated as a result of a reprehensible act that is the real cause of the termination.¹

[16] The undisputed evidence before the General Division shows that the employer never gave the Claimant permission to take additional leave. She insisted on taking three and a half additional days off. The Claimant made a decision that was conscious, deliberate, and intentional. She knew there would be consequences. Taking leave from work without permission caused her to lose her job.

[17] As the General Division noted, this act amounts to misconduct under the *Employment Insurance Act*.²

[18] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for permission to appeal, I am of the view 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.

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

Pierre Lafontaine
Member, Appeal Division

¹ *Canada (Attorney General) v Desson*, 2004 FCA 303.

² *Jamieson v Canada (Attorney General)*, 2011 FCA 204.