



Citation: *MF v Canada Employment Insurance Commission*, 2023 SST 1011

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

**Leave to Appeal Decision**

**Applicant:** M. F.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated June 5, 2023  
(GE-23-813)

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**Tribunal member:** Janet Lew

**Decision date:** July 31, 2023

**File number:** AD-23-606

## Decision

[1] Leave (permission) to appeal is refused. The appeal will not proceed.

## Overview

[2] The Applicant, M. F. (Claimant), is appealing the General Division decision. The General Division dismissed the Claimant's appeal. It found that she did not have just cause for having left her job when she did. The General Division found that she had reasonable alternatives to leaving. As a result, she was disqualified from receiving Employment Insurance benefits.

[3] The Claimant argues that the General Division made legal and factual errors. She argues that it overlooked the fact that she held another job. That had been her main job. She had been laid off from this other job. She argues that, had the General Division considered these facts as well, it would have determined that she was entitled to receive Employment Insurance benefits.

[4] Before the Claimant can move ahead with her appeal, I have to decide whether the appeal has a reasonable chance of success. In other words, there has to be an arguable case.<sup>1</sup> If the appeal does not have a reasonable chance of success, this ends the matter.<sup>2</sup>

[5] I am not satisfied that the appeal has a reasonable chance of success. Therefore, I am not giving permission to the Claimant to move ahead with her appeal.

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<sup>1</sup> *Fancy v Canada (Attorney General)*, 2010 FCA 63.

<sup>2</sup> Under section 58(2) of the *Department of Employment and Social Development (DESD) Act*, I am required to refuse permission if I am satisfied "that the appeal has no reasonable chance of success."

## Issue

[6] The issues are as follows:

- (a) Is there an arguable case that the General Division overlooked the fact that the Claimant had been laid off from her main job?
- (b) Is there an arguable case that the General Division should have considered the layoff in determining whether the Claimant was entitled to receive Employment Insurance benefits?

## I am not giving the Claimant permission to appeal

[7] The Appeal Division must grant permission to appeal unless the appeal does not have a reasonable chance of success. A reasonable chance of success exists if the General Division might have made a jurisdictional, procedural, legal, or certain type of factual error.<sup>3</sup>

[8] For factual errors, the General Division had to have based its decision on an error that it made in a perverse or capricious manner, or without regard for the evidence before it.

## The Claimant was laid off from her main job

[9] The Claimant held two jobs. Her primary job was as a packer for a moving company. She was laid off from this employment in October 2022 due to a shortage of work. Her last day for which she was paid was October 21, 2022.<sup>4</sup>

[10] The Claimant also worked as a caregiver. She worked a meagre three hours per week for this employer. She quit this employment on October 26, 2022.<sup>5</sup>

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<sup>3</sup> See section 58(1) of the DESD Act.

<sup>4</sup> Record of Employment dated December 5, 2022, at GD 3-18.

<sup>5</sup> Record of Employment dated December 5, 2022, at GD 3-20.

### **The General Division was aware that the Claimant had been laid off from her main job**

[11] In her Notice of Appeal – Employment Insurance - General Division, the Claimant noted that most of her insurable earnings was from her primary employment with the moving company. So, this should have signalled to the General Division that the Claimant was possibly arguing that it should give more weight or consideration to the layoff from her primary employment.

[12] The General Division noted that the Claimant held two jobs.<sup>6</sup> She had been laid off from one of her jobs. It also noted that she had worked only three hours a week at the part-time job that she left. The General Division wrote, “After she was laid off from one job, she decided to quit the second job ...”<sup>7</sup>

[13] The General Division clearly was mindful of the Claimant’s evidence that she held two jobs and had been laid off from her main job.

### **The Claimant says the General Division should have considered the layoff**

[14] The Claimant suggests that any entitlement to Employment Insurance benefits should be tied to her primary employment. She argues that the General Division should have considered the fact that she had been laid off from her main job in determining whether she was entitled to receive Employment Insurance benefits. She argues the layoff should have counted over the fact that she quit her second job because most of her insurable earnings had been from her main job.

### **The General Division did not have a choice but to consider the Claimant’s second job**

[15] Despite the Claimant’s arguments, the General Division did not have any choice but to consider the Claimant’s second employment, even if she worked only three hours

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<sup>6</sup> General Division decision, at paras 6 and 18

<sup>7</sup> General Division decision, at para 18.

a week for this employer. The *Employment Insurance Act* makes it clear that one has to consider whether there is just cause for voluntarily leaving **an employment**.

[16] Under the interpretation part in section 29(a) of the *Employment Insurance Act*, “employment” refers to “the claimant’s last employment before their initial claim for benefits or any employment of the claimant within their benefit period.”

[17] Clearly, the part-time job fell into this definition of employment. So, the General Division had to consider the circumstances that led to the Claimant’s separation from this employment. It had to consider whether the Claimant voluntarily left and whether she had just cause for having left.

[18] The Claimant argues that she did not have any choice but to quit her last job and return home (to another province). It was too expensive to continue working in the province and to try to make ends meet. The General Division accepted this evidence.

[19] The General Division found that these reasons did not qualify as just cause for voluntarily leaving for the purposes of the *Employment Insurance Act*. The General Division found that the Claimant had reasonable alternatives to leaving her last employment. For instance, the General Division found that the Claimant could have picked up more work with her second employer. The Claimant does not contest these findings.

[20] I am not satisfied that there is an arguable case that the General Division should have counted the layoff over the fact that the Claimant quit her second job or should have given more weight to some of the evidence. The General Division did not have a choice but to consider the Claimant’s second job and examine why she left that job. I am not satisfied that there is an arguable case that the General Division made a legal or factual mistake by considering the fact that the Claimant left her employment.

[21] No doubt this result will seem unduly harsh. Had the Claimant not held this second job and had been laid off from her primary job, likely she would have been entitled to receive Employment Insurance benefits. However, I have to consider whether the appeal has a reasonable chance of success. That case has not been made out.

## **Conclusion**

[22] Permission to appeal is refused. This means that the appeal will not be going ahead.

Janet Lew  
Member, Appeal Division