



Citation: *FD v Canada Employment Insurance Commission*, 2023 SST 1019

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: F. D.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated June 12, 2023
(GE-23-727)

Tribunal member: Janet Lew

Decision date: July 31, 2023

File number: AD-23-622

Decision

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

Overview

[2] The Applicant, F. D. (Claimant), is appealing the General Division decision. The General Division dismissed the Claimant's appeal. It found that he quit his job. It also found that he did not prove that he had just cause for quitting as he had reasonable alternatives to quitting. As a result, the Claimant was disqualified from receiving Employment Insurance benefits.

[3] The Claimant argues that he has been treated unfairly. He was out of the country receiving medical treatment. But his employer refused to extend his leave, prompting the Claimant to quit and later apply for Employment Insurance benefits. He says that it was reasonable for him to finish his medical treatment, so says this should be considered when deciding whether he should be entitled to benefits.

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

[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 his appeal.

Issue

[6] Is there an arguable case that the General Division made any procedural, legal, or factual mistakes?

¹ *Fancy v Canada (Attorney General)*, 2010 FCA 63.

² 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."

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.³

[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.

Is there an arguable case that the General Division made a procedural error?

[9] The Claimant says that he has been treated unfairly. But he does not suggest that the General Division failed to ensure a fair process, or that it violated the principles of natural justice.

[10] For instance, the Claimant does not indicate that the General Division member (or Social Security Tribunal) failed to give him any documents, that it gave him inadequate notice, or that it somehow deprived him of any opportunity to fairly present his case. At most, he says that he has been treated unfairly. But disagreeing with the outcome or any requirements under the *Employment Insurance Act* is not evidence of any procedural errors.

[11] Without any indication that the General Division made a procedural mistake or violated the principles of natural justice, I am not satisfied that the appeal has a reasonable chance of success on this point.

³ See section 58(1) of the DESD Act.

Is there an arguable case that the General Division made a legal error?

[12] The Claimant suggests that the General Division might have made a legal error by failing to consider his need for ongoing medical treatment. The Claimant says that his medical needs represented just cause for leaving his employment.

[13] However, the General Division addressed the Claimant's arguments. It noted the evidence that the Claimant experienced side-effects from prescribed medication for his rheumatoid arthritis, and that, while on parental leave, he decided to seek homeopathic treatment overseas. He travelled to India and began seeing a homeopathic practitioner there. The practitioner recommended that the Claimant remain in India to continue with the treatment. The General Division accepted the Claimant's evidence.

[14] The General Division also accepted that the Claimant chose to remain in India to finish his treatment, although his employer had asked him to return to work. The General Division found that the Claimant had to quit his employment, so he could remain in India.

[15] The General Division referred to section 29(c) of the *Employment Insurance Act*. Section 29(c) lists the circumstances when just cause might arise. Circumstances include working conditions that constitute a danger to the Claimant's health or safety. However, it does not appear that there was any evidence before the General Division that could have supported any claim that working conditions constituted a danger to the Claimant's health or safety.

[16] The General Division recognized that it had to look at all of the circumstances that existed when the Claimant quit his employment.

[17] But, as the General Division noted, for just cause to exist, a claimant must not have any reasonable alternatives to leaving. The General Division examined whether the Claimant had any reasonable alternatives to quitting his employment. The General Division concluded that the Claimant had reasonable alternatives.⁴ The Claimant does

⁴ General Division decision at paras 25 to 36.

not challenge the General Division's analysis or findings, other than to say that he should have been permitted to finish the medical treatment he pursued in India.

[18] It is clear that the General Division member was familiar with and applied the appropriate legal test. It cited section 29(c) of the *Employment Insurance Act* and examined all of the Claimant's circumstances and whether he had any reasonable alternatives to leaving his employment. For these reasons, I am not satisfied that the appeal has a reasonable chance of success.

Conclusion

[19] As the appeal does not have a reasonable chance of success, permission to appeal is refused. This means that the appeal will not be going ahead.

Janet Lew
Member, Appeal Division