



Citation: *MA v Canada Employment Insurance Commission*, 2023 SST 1002

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: M. A.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated May 23, 2023
(GE-23-502)

Tribunal member: Pierre Lafontaine

Decision date: July 27, 2023

File number: AD-23-549

Decision

[1] Leave to appeal is refused. This means the appeal will not proceed.

Overview

[2] The Applicant (Claimant) stopped working and applied for Employment Insurance (EI) benefits. The Respondent (Commission) initially decided that the Claimant had lost his job because of misconduct. After reconsideration, it decided that he voluntarily left (or chose to quit) his job without just cause, so they couldn't pay him benefits. The Claimant appealed the reconsideration decision to the General Division.

[3] The General Division found that the Claimant voluntarily left his job. It found that the Claimant did not show that he had just cause for leaving his job because he had reasonable alternatives to leaving his job. The General Division concluded that he did not have just cause to leave his job when he did.

[4] The Claimant seeks leave to appeal of the General Division's decision to the Appeal Division. The Claimant submits that the General Division made important errors of fact and law.

[5] I must decide whether the Claimant has raised some reviewable error of the General Division upon which the appeal might succeed.

[6] I am refusing leave to appeal because the Claimant's appeal has no reasonable chance of success.

Issue

[7] Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

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 that:

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 leave 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 leave to appeal stage, the Claimant does not have to prove his case but must establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, that there is arguably some reviewable error upon which the appeal might succeed.

[10] Therefore, before I can grant leave to appeal, I need to be satisfied that the reasons for appeal fall within any of the above-mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success.

Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

[11] The Claimant submits that he did not voluntarily leave his job. He was thrown out of the building, therefore terminated. He submits that it was not reasonable for him to go back to work with those who assaulted him considering the limited working space. He puts forward that no set schedule had been made with regards to joining the accounting team. The Claimant submits that a similar incident happened at work on his first day of work involving the supervisor who pushed him out of the building.

[12] Whether one had just cause to voluntarily leave an employment depends on whether they, having regard to all the circumstances, had no reasonable alternative to leaving.

[13] The General Division found that the Claimant voluntarily left his job. The Claimant stated on two separate occasions that he was not dismissed but that he had quit the job.¹ He no longer wanted to work for the employer because he felt unsafe. The employer stated that his working colleagues understood that the incident was probably due to stress and that they had no intention of dismissing the Claimant. The employer wanted to discuss with him to resolve issues at work. The Claimant never returned his calls and did not show up at work.²

[14] The evidence supports the General Division's conclusion that the Claimant is the one who put an end to his employment.

[15] The General Division found that the Claimant did not show that he had just cause for leaving his job because he had reasonable alternatives to leaving his job. It found that the Claimant could have at least tried to resolve the issues at work.

[16] As the General Division pointed out, the Claimant was required to discuss his working conditions with his employer and explore the possibility that his safety concerns could be resolved to his satisfaction. This is especially true considering that the Claimant acknowledged that after the initial incident involving his supervisor, the employee returned to work the next day, and everyone acted professionally and resumed work as such.³

[17] I see no reviewable error made by the General Division. The General Division's conclusion is supported by the evidence and case law. Unfortunately, for the Claimant, an appeal to the Appeal Division is not a new opportunity to re-present evidence to obtain a different outcome.

¹ See GD3-30 and GD3-36.

² See GD3-38.

³ See GD3-11.

[18] After reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Claimant in support of his request for leave to appeal, I find that the appeal has no reasonable chance of success.

Conclusion

[19] Leave to appeal is refused. This means the appeal will not proceed.

Pierre Lafontaine
Member, Appeal Division