



Citation: *SV v Canada Employment Insurance Commission*, 2023 SST 1030

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: S. V.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated June 6, 2023
(GE-23-49)

Tribunal member: Pierre Lafontaine

Decision date: August 2, 2023

File number: AD-23-594

Decision

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

Overview

[2] The Respondent (Commission) decided that the Applicant (Claimant) was disqualified from receiving Employment Insurance (EI) regular benefits as of August 28, 2022, because he voluntarily left his employment without just cause. The Commission also decided the Claimant was disentitled to benefits when he was laid off on April 3, 2022, because he didn't prove his availability for work. After an unsuccessful reconsideration, the Claimant appealed to the General Division.

[3] The General Division found that the Claimant voluntarily left his job when he turned down the employer's recall on August 29, 2022. The Claimant had a choice to resume his employment but chose not to do so. It found that the Claimant did not discuss his health situation with his employer before turning down the recall. The General Division also found that there was no medical evidence that supported the Claimant's position that his health and physical capabilities did not allow him to commute to the place of work and to perform the work. It concluded that the Claimant did not have just cause for leaving his employment.

[4] The General Division further found that the Claimant wasn't available for work between July 24, 2022, and August 28, 2022. It found that the Claimant didn't demonstrate that he wanted to return to work, didn't look for suitable employment, and limited his job options by saying he didn't want the long commute that he was normally accustomed to.

[5] The Claimant seeks leave to appeal of the General Division's decision to the Appeal Division. The Claimant submits that he did not leave his job on August 29, 2022, because he was not employed since March 31, 2022. He submits that he was in contact with his union the whole time looking for work. The Claimant submits that he

filed a doctor's note stating that he can't drive over one hour at a time due to medical reasons so he can only look for work in that time range.

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

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

Issue

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

Analysis

[9] 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.

[10] 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.

[11] 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?

[12] The Claimant submits that he did not leave his job on August 29, 2022, because he was not employed since March 31, 2022. He submits that he was in contact with his union the whole time looking for work. The Claimant submits that he filed a doctor's note stating that he can't drive over one hour at a time due to medical reasons so he can only look for work in that range.

Voluntary leave

[13] The General Division found that the Claimant voluntarily left his job when he turned down his employer's recall on August 29, 2022. The Claimant had a choice to resume his employment but chose not to do so. It found that the Claimant did not discuss his health situation with his employer before turning down the recall. The General Division also found that there was no credible medical evidence that supported the Claimant's position that his health and physical capabilities did not allow him to commute to the place of work and to perform the work. It concluded that the Claimant did not have just cause for leaving his employment.

[14] The law says that voluntarily leaving an employment includes the refusal to resume an employment, in which case the voluntary leaving occurs when the employment is supposed to be resumed.¹

[15] The evidence shows that the Claimant turned down the recall from his employer on August 29, 2022. He therefore left his employment on August 29, 2022.

¹ See Section 29(b.1) (ii) of the *Employment Insurance Act*.

[16] The General Division determined that the Claimant did not seriously discuss his health situation with his employer prior to leaving. He did not ask for accommodations.

[17] The Federal Court of Appeal has determined that claimants must demonstrate that they have attempted to reach an agreement with their employer to accommodate their health concerns before leaving.² The Claimant made no attempt.

[18] The General Division also found that there was no credible medical evidence that supported the Claimant's position that his health and physical capabilities did not allow him to commute to the place of work and to perform the work.

[19] The evidence shows that the Claimant's doctor stated that he is capable of working. The doctor did not write him a medical note to take time off work or to quit because of his knees.³

[20] The Claimant submits that he filed a doctor's note stating that he can't drive over one hour at a time due to medical reasons so he can only look for work in that range.

[21] The General Division did not accept the Claimant's late document as evidence because it wasn't relevant to the period under review, and its authenticity could not be verified.⁴ I note that there is no mention that the individual who signed the document is a medical practitioner. The document dated June 1, 2023, does not mention since when the Claimant is unable to drive long distances. The General Division also considered that the Claimant did not inform the Commission about his medical issues causing the long drives to be difficult when interviewed.

[22] I find that the General Division's decision on the issue of the Claimant's voluntarily leaving his employment is consistent with the evidence before it and that the decision complies with the law and decided cases. I see no reviewable error upon which the appeal might succeed.

² *Her Majesty the Queen v Dietrich*, FCA, A-640-93.

³ See GD3-19 and GD3-28.

⁴ See General Division decision, para. 15.

Availability

[23] To be considered available for work, a claimant must show that he is capable of, and available for work and unable to obtain suitable employment.

[24] Availability must be determined by analyzing three factors:

- (1) the desire to return to the labour market as soon as a suitable job is offered,
- (2) the expression of that desire through efforts to find a suitable job, and
- (3) not setting personal conditions that might unduly limit the chances of returning to the labour market.

[25] The EI Act clearly states that to be entitled to benefits, a claimant must establish their availability for work, and to do this, they must look for work. A claimant must establish their availability for work for each working day in a benefit period and this availability must not be unduly limited.

[26] The General Division found that, after a 3-month grace period, the Claimant did not show that he wanted to go back to work and did not make enough efforts to find a suitable job. The Claimant stated that he was not in a hurry to find a job. He turned down a recall. The General Division found that the Claimant limited his chances to go back to work because he was only looking for jobs within a certain range and no credible medical evidence supported such a restriction.

[27] The evidence supports the General Division's conclusion that the Claimant did not demonstrate that he was available for work but unable to find a suitable job between July 24, 2022, and August 28, 2022.

[28] I see no reviewable error made by the General Division. The Claimant does not meet the relevant factors to determine availability between July 24, 2022, and August 28, 2022.

Conclusion

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

Pierre Lafontaine
Member, Appeal Division