



Citation: *DL v Canada Employment Insurance Commission*, 2023 SST 1106

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

# **Leave to Appeal Decision**

<b>Applicant:</b>	D. L.
<b>Respondent:</b>	Canada Employment Insurance Commission
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<b>Decision under appeal:</b>	General Division decision dated June 27, 2023 (GE-23-1448)
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<b>Tribunal member:</b>	Stephen Bergen
<b>Decision date:</b>	<b>August 15, 2023</b>
<b>File number:</b>	AD-23-743

## Decision

[1] I am refusing leave (permission) to appeal. The appeal will not proceed.

## Overview

[2] D. L. is the Applicant. I will call him the Claimant because he made a claim for Employment Insurance (EI) benefits. The Claimant was laid-off from his job and applied for EI benefits. The Respondent, the Canada Employment Insurance Commission (Commission) told him he did not have enough hours of insurable employment to qualify on December 2, 2022.<sup>1</sup> It told him he could reapply if he obtained more hours.

[3] Because of this, the Claimant found work with a temporary employment agency.<sup>2</sup> When he was sure that he had enough hours, he stopped working and applied for EI benefits again.

[4] On March 21, 2023, the Commission told the Claimant it was not accepting his claim.<sup>3</sup> It sent him a decision letter on March 22, 2023, telling him that it could not pay him benefits because he had voluntarily left his employment without just cause.

[5] The Claimant asked the Commission to reconsider but it would not change its decision. Next, the Claimant appealed the reconsideration decision to the General Division of the Social Security Tribunal. The General Division dismissed the appeal. It agreed that the Claimant did not have just cause for quitting.

[6] The Claimant is now asking the Appeal Division for leave to appeal.

[7] I am refusing leave to appeal. The Claimant has not made out an arguable case that the General Division made an important error of fact.

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<sup>1</sup> The Employment Insurance Act requires claimants to accumulate a certain number of “hours of insurable employment” to qualify for benefits. When I refer to “hours” in this decision, I am referring to hours of insurable employment.

<sup>2</sup> I will just call the employment agency the “agency.”

<sup>3</sup> See GD3-24.

## Issues

[8] Is there an arguable case that the General Division made an important error of fact when it found that the Claimant had quit?

[9] Is there an arguable case that the General Division made any other important error of fact?

## I am not giving the Claimant permission to appeal

### General Principles

[10] For the Claimant's application for leave to appeal to succeed, his reasons for appealing would have to fit within the "grounds of appeal." The grounds of appeal identify the kinds of errors that I can consider.

[11] I may consider only the following errors:

- a) The General Division hearing process was not fair in some way.
- b) 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 (error of jurisdiction).
- c) The General Division based its decision on an important error of fact.
- d) The General Division made an error of law when making its decision.<sup>4</sup>

[12] To grant this application for leave and permit the appeal process to move forward, I must find that there is a reasonable chance of success on one or more grounds of appeal. Other court decisions have equated a reasonable chance of success to an "arguable case."<sup>5</sup>

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<sup>4</sup> This is a plain language version of the grounds of appeal. The full text is in section 58(1) of the *Department of Employment and Social Development Act* (DESDA).

<sup>5</sup> See *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; and *Ingram v Canada (Attorney General)*, 2017 FC 259.

## Important error of fact

### – Did the Claimant quit?

[13] The Claimant argues that the General Division made an important error of fact when it found that he quit his employment at the agency. He says the Record of Employment (ROE) from the agency says that he quit because the agency did this “automatically.”

[14] However, the Claimant has not pointed to any evidence that the General Division overlooked or misunderstood, and he has not shown that the evidence before the General Division could not support its finding that he quit.<sup>6</sup>

[15] The General Division told the Claimant that the reason for separation on the ROE said, “at the employee’s request.” The Claimant agreed, adding that all he needed was 43 hours.<sup>7</sup> He did not challenge the reason from the ROE, or explain how or why the ROE was completed automatically. There was no evidence to suggest the agency would have completed the ROE differently if it had known more about why the Claimant was leaving.

[16] Furthermore, the Record of Employment was not the only evidence of what happened when the Claimant left the agency. When the Claimant applied for benefits, he said that he, “quit the job after he obtained enough hours for [his] EI.” According to the Commission’s notes, he told an agent on March 15, 2023, that he quit as soon as he had enough hours to qualify for benefits. He said that this was his only reason for quitting.<sup>8</sup>

[17] The Claimant also testified at the General Division hearing. He explained that he said he “quit” because he did not know how else to put it.<sup>9</sup> However, he also admitted

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<sup>6</sup>I am paraphrasing. Section 58(1)(c) of the DESD Act states that the General Division has made an error of fact where it has, “based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard to the material before it.”

<sup>7</sup> Listen to the audio recording of the General Division hearing at timestamp 13:50.

<sup>8</sup> See GD3-25.

<sup>9</sup> Listen to the audio recording of the General Division hearing at timestamp 13:00.

that he left the agency because he had more than enough hours and wanted to get on to EI benefits.<sup>10</sup> He agreed that the agency did not lay him off or fire him.<sup>11</sup>

[18] It does not matter whether the Claimant meant to say that he “quit” when he completed the application for benefits. The *Employment Insurance Act* (EI Act) says that a Claimant is disqualified from receiving benefits if they voluntarily leave their employment without just cause.<sup>12</sup>

[19] Quitting would just be a simpler way for the Claimant to say he left his employment voluntarily. There was evidence before the General Division, including the Claimant’s testimony, supporting its finding that he left his employment voluntarily. There was no evidence to suggest that he did not leave voluntarily.

[20] There is no arguable case that the General Division made an important error of fact in finding that the Claimant voluntarily left the agency.

– **Other error of fact**

[21] The General Division found that the Claimant “voluntarily left his employment.” But it also found that he had reasonable alternatives to leaving, which means that he did not have “just cause” for leaving.

[22] The Claimant has not pointed to any evidence that the General Division overlooked or misunderstood to reach either of these findings. However, the Claimant is unrepresented, and he may have had difficulty framing his argument.

[23] Because of this, I have searched the appeal record to see if there is any other argument that the General Division made an important error of fact.

[24] I have not found any instance in which the General Division may have overlooked or misunderstood relevant evidence. In addition, the General Division’s findings appear to follow from the evidence that was before it.

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<sup>10</sup> Listen to the audio recording of the General Division hearing at timestamp 14:25.

<sup>11</sup> Listen to the audio recording of the General Division hearing at timestamp 15:50.

<sup>12</sup> See section 29(c) and section 30 of the EI Act.

[25] The Claimant's appeal has no reasonable chance of success.

## **Conclusion**

[26] I am refusing permission to appeal. This means that the appeal will not proceed.

Stephen Bergen  
Member, Appeal Division