



Citation: *DC v Canada Employment Insurance Commission*, 2023 SST 1141

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant:	D. C.
Respondent:	Canada Employment Insurance Commission
<hr/>	
Decision under appeal:	General Division decision dated June 1, 2023 (GE-23-404)
<hr/>	
Tribunal member:	Stephen Bergen
Decision date:	August 21, 2023
File number:	AD-23-653

Decision

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

Overview

[2] D. C. is the Applicant. He made a claim for Employment Insurance (EI) benefits so I will call him the Claimant. The Respondent, the Canada Employment Insurance Commission (Commission), denied the Claimant's claim for benefits because it found that he voluntarily left his employment without just cause. When the Claimant asked the Commission to reconsider, it would not change its decision.

[3] The Claimant appealed to the General Division of the Social Security Tribunal, which dismissed his appeal. He is now asking the Appeal Division to grant him leave to appeal the General Division decision.

[4] I am refusing leave to appeal. The Claimant has not identified an arguable case that the General Division made an error of law, or any of the other errors that I may consider.

Issue

[5] Did the General Division apply the wrong legal test when it considered whether he had voluntarily left his employment without just cause?

I am not giving the Claimant permission to appeal

Analysis

General Principles

[6] For the Claimant's application for leave to appeal to succeed, his reasons for appealing would have to fit within the "grounds of appeal." 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.

[7] The grounds of appeal identify the kinds of errors that I can consider. 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.¹

[8] The Courts have equated a reasonable chance of success to an “arguable case.”²

Error of Law

[9] The Claimant argues that the General Division should not have considered whether he left his job without just cause. He says that the General Division should have decided if he was wrongfully dismissed, instead.

[10] There is no arguable case that the General Division made an error by considering only whether the Claimant had just cause for leaving his employment.

[11] The Commission denied the Claimant’s application for EI benefits. It found that the Claimant did not have just cause for leaving his employment. The *Employment Insurance Act* states that a claimant is disqualified from receiving benefits if they voluntarily leave their employment without just cause.³

[12] The General Division was required to decide if the Commission was correct that the Claimant did not have just cause for leaving. It had no authority to decide if he was

¹ 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).

² See *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; and *Ingram v Canada (Attorney General)*, 2017 FC 259.

³ See section 29(c) and section 31 of the EI Act.

“wrongfully dismissed.” The General Division could only consider the Employment Insurance issues arising out of the Commission’s reconsideration decision.⁴

[13] A wrongful dismissal claim or lawsuit is normally pursued against an employer, and seeks an award in damages from the employer. Such a claim cannot obtain EI benefits as its remedy.

[14] If the Claimant wants to assert that he was wrongfully dismissed because of a dispute with his employer over his pay, he needs to pursue that claim somewhere else, such as the civil courts or through an Employment Standards claim.

Other Errors

[15] In his application to the Appeal Division, the Claimant made a number of assertions. For example, he said that the employer fired him when he gave them “notice of leave.” He also said that the employer refused to negotiate, and lied about their intention to pay overtime and commission.

[16] However, the Claimant did not say how these assertions relate to the General Division’s handling of the evidence. He has not identified how the General Division ignored or misunderstood relevant evidence to make findings of fact necessary to its decision.

[17] I appreciate that the Claimant is unrepresented. He may not have understood precisely what he should argue. Therefore, I searched the record for relevant evidence that the General Division may have ignored or misunderstood.⁵ If the General Division based its decision on a finding of fact that ignored or misunderstood relevant evidence, this would be an important error of fact.

[18] The record does not support an argument that the General Division made an important error of fact.

⁴ See section 112 and 113 of the EI Act.

⁵ I am following the direction of the Federal Court in decision such as *Karadeolian v. Canada (Attorney General)*, 2016 FC 615.

[19] The General Division noted that the Claimant agreed that he made the decision to quit. It found no evidence to contradict this.⁶ Despite the Claimant's present assertion that he was fired, there is no arguable case that the General Division misunderstood or ignored evidence that he voluntarily left his employment.

[20] In addition, the Claimant said that the employer refused to negotiate. It is not clear whether the Claimant is talking about the employer's actions after he left his employment or before.

[21] The General Division considered evidence of the circumstances that existed at the time the Claimant left his employment. It found that the employer had not refused to pay overtime. It said that the question of overtime was not settled and that discussions had been ongoing. The General Division relied on the employer's statements to the Commission. The employer had told the Commission that they were considering looking at paying overtime as a bonus but later said they were willing to pay him for extra hours.

[22] The General Division also considered the bonus/commission structure and when it was to be paid. It reviewed the offer of employment and how the Claimant's work was expected to generate a bonus. It said that the employer was still offering to pay the bonus, but that it was refusing to pay the Claimant what the Claimant "guesstimated" he should receive. It did not say anything about whether the employer was still open to negotiating the bonus.

[23] But, regardless of whether the employer was refusing to pay the Claimant's bonus or overtime, or refusing to negotiate the amount and timing of payments, the General Division decision does not depend on these facts.

[24] "Just cause" for leaving can only be found where there are no reasonable alternatives to leaving. Since the employer and the Claimant had such different views, the General Division said that the Claimant could have taken his claim to the relevant labour authorities for guidance and investigation. It also said that he could have

⁶ See para 10 of the General Division decision.

continued working while he searched for other employment. Both of these alternatives would have been available even if the employer had been refusing to negotiate.

[25] The Claimant also argues that the employer lied about their intention to pay overtime and commission. He seems to be asking me to find that the General Division should have rejected the employer's evidence and accepted his own. He is asking me to reweigh the evidence that was before the General Division.

[26] However, that is not my role. I have no ability to re-evaluate or reweigh the evidence to come to a different conclusion.⁷ I cannot intervene in the General Division's findings, unless those findings ignore or misunderstand the evidence, or unless they are unsupported by the available evidence. The Claimant has not pointed to where the General Division may have mishandled evidence, nor have I discovered an instance in which this occurred.

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

Conclusion

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

Stephen Bergen
Member, Appeal Division

⁷ *Bergeron v Canada (Attorney General)*, 2016 FC 220, *Hideq v Canada (Attorney General)*, 2017 FC 439, *Parchment v Canada (Attorney General)*, 2017 FC 354.