



Citation: *GB v Canada Employment Insurance Commission*, 2023 SST 1266

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: G. B.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated June 20, 2023
(GE-23-457)

Tribunal member: Stephen Bergen

Decision date: September 13, 2023

File number: AD-23-665

Decision

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

Overview

[2] G. B. is the Applicant. I will call him the Claimant because he made a claim for Employment Insurance (EI) benefits. The Respondent, the Canada Employment Insurance Commission (Commission), denied his claim. It said that he had voluntarily left his employment without just cause so he was disqualified from benefits. It also said that he was disentitled to benefits because he was not available for work. The Claimant asked the Commission to reconsider. It did not change its decision.

[3] The Claimant appealed the Commission's reconsideration decision to the General Division. The General Division dismissed his appeal on the question of his disqualification, but found that he was not disentitled from May 10, 2023, onwards. This finding did not assist the Claimant to obtain any benefits because it did not affect the Claimant's disqualification.

[4] The Claimant is asking the Appeal Division for permission to leave to appeal the General Division decision.

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

Issue

[6] Is there an arguable case that the General Division made an error of procedural fairness by relying on documents not disclosed to the Claimant?

[7] Is there an arguable case that the General Division made an error of law?

[8] Is there an arguable case that the General Division made an important error of fact by failing to consider evidence:

- a) that the Claimant left his employment primarily due to deteriorating mental health?
- b) that the Claimant's mental health affected his ability to look for other work before leaving his employment?

Analysis

General Principles

[9] 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.

[10] 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

[11] To grant this application for leave and permit the appeal process to move forward, I must find that the Claimant has 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".²

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.

Procedural fairness

[12] The Claimant argued that the General Division relied on documents that he did not have the opportunity to see or to comment on during the proceedings.

Disclosure of documents to Claimant

[13] There is no arguable case that the General division relied on documents that the Claimant had not seen.

[14] The Claimant did not point to any document that the General Division relied on that was not also in the disclosure documents that were sent to him. I have reviewed the record and I have not found that the General Division relied on any other document. The Claimant acknowledged having received and reviewed the documents a couple of months before the hearing. But he told the General Division that he did not care to read them, “in depth and further”.³

Opportunity for Claimant to respond to documents

[15] There is also no arguable case that the Claimant did not get a chance to comment on the disclosure documents. He was allowed to testify in narrative form, and he was also asked questions by the member.

[16] The General Division member wanted to make certain that the Claimant was comfortable proceeding based on his earlier review of the documents.⁴ The member said that he could not go through everything that the Commission was saying. However, he offered to give the Claimant the “gist” of information from the Commission’s documents, as they came to the documents in the course of the hearing.⁵

[17] The General Division informed the Claimant that it would be helpful if the Claimant could have the documents open on his computer when they discussed them. He referred particularly to GD3 (the reconsideration file) and GD4 (the Commission’s

³ Listen to the audio recording of the General Division hearing at timestamp: 9:50.

⁴ Listen to the audio recording of the General Division hearing at timestamp: 11:00.

⁵ Listen to the audio recording of the General Division hearing at timestamp: 11:20.

argument in the appeal)⁶. The Claimant confirmed that he would be able to access the documents when they discussed them.⁷ He said he was comfortable proceeding.⁸

[18] Later in the hearing, the member had questions for the Claimant about his statements to the Commission. He asked the Claimant if he wanted the member to direct him to the file documents so that they could look at them together as the member asked his questions. The Claimant was not interested.⁹ The Member offered that he would quote from the documents if the Claimant had trouble recalling anything or if he was unclear. The Claimant was satisfied with that.¹⁰

[19] When the member asked the Claimant about anything in a document, he generally tried to read or explain what the document said. At no point did the Claimant object to the hearing process or suggest that he was not getting enough information to respond the way he would have liked.

[20] The Claimant may have been disinclined to review the disclosure documents in detail and he may not have prepared for the hearing as thoroughly as he might have done. But this does not suggest that the General Division acted unfairly.

[21] There is no arguable case that the General Division process was unfair.

Error of law

[22] The Claimant argued that the General Division may have misinterpreted or misapplied the law. However, he did not identify the error.

[23] There is no arguable case that the General Division made an error of law.

[24] The General Division applied the correct test to determine if the Claimant voluntarily left his job and if he had just cause for leaving. It understood that a claimant only has just cause for leaving if they have no reasonable alternative, having regard to

⁶ Listen to the audio recording of the General Division hearing at timestamp: 11:45.

⁷ Listen to the audio recording of the General Division hearing at timestamp: 11:55.

⁸ Listen to the audio recording of the General Division hearing at timestamp: 12:55.

⁹ Listen to the audio recording of the General Division hearing at timestamp: 31:00.

¹⁰ Listen to the audio recording of the General Division hearing at timestamp: 31:10.

all the circumstances. The General Division required the Claimant to prove that he had no reasonable alternatives on a balance of probabilities.

[25] To the extent the General Division used case law (decisions of the courts) to support its application of the *Employment Insurance Act*, its citations were appropriate. It did not fail to consider any binding precedent that would have led it to a different result on the facts of the case.

[26] The General Division considered the relevant circumstances suggested by the facts. It referred to the insecure, contract nature of the Claimant's job, his assertion that his mental health was affected,¹¹ and his desire to return to school. Having regard to those circumstances, it considered whether the Claimant had no reasonable alternative to leaving his job at the time that he left.

[27] In deciding whether the Claimant was available for work, the General Division considered whether the Claimant was a full-time student. It found that he was not, so it found that the presumption of non-availability did not apply.

[28] In considering his availability, it considered the three *Faucher* factors, as directed by the Federal Court of Appeal. These include whether he had a desire to return to work; whether he expressed that desire through a job search, and; whether he set personal conditions that unduly restricted his chances of re-entering the labour market.¹² This is the proper test of availability. I have no reason to think the General Division did not understand it correctly.

Important error of fact

[29] The Claimant argued that the General Division made an important error of fact because it ignored evidence of his mental health condition and its challenges. He has also argued that the General Division's failure to take his mental health into

¹¹ Considered at paras 38, 39 and 41 of the General Division decision.

¹² *Faucher v Canada Employment and Immigration Commission*, A-56-96, and A-57-96

consideration is a jurisdictional error, but I am considering it here as a possible error of fact.

[30] There is no arguable case that the General Division made an important error of fact. It found that the Claimant's primary reason for quitting was to go to school. It also found that he could have looked for another job until his contract ended, as a reasonable alternative to quitting. These findings follow rationally from the evidence. The Claimant did not say why it thinks the General Division misunderstood the evidence, or point to anything that the General Division ignored.

[31] I have reviewed the file and listened to the audio recording of the hearing. It appears the General Division decision accurately recounted what the Claimant said about how he was stressed and how the stress affected him.

Failure to consider stress as a circumstance causing the Claimant to quit

[32] There is no arguable case that the General Division failed to consider how the Claimant's stress affected his decision to quit.

[33] The only evidence of the Claimant's mental health challenges came from his own statements and testimony that he was under stress and having difficulty with his workload. He said that the uncertainty of his contract position was causing or aggravating his stress. The Claimant also said that his mental health issues were well-documented, and he referred to therapy, but he provided no other details of a psychological diagnosis or other condition, of his symptoms, or any treatment recommendations. If his mental health issues were well-documented, he did not submit any of that documentation into evidence.

[34] The General Division understood that the Claimant felt stressed and believed his mental health was a risk. However, the General Division preferred other evidence when it found that the primary reason the Claimant quit was to go to school.

[35] This included the Claimant's original application for benefits, where he stated that he quit to go to school starting September 7, 2022. It also included a statement from the

employer confirming that the Claimant's resignation letter said he was quitting to return to school.

Failure to consider how stress affected his reasonable alternatives

[36] There is no arguable case that the General Division failed to consider how the Claimant's stress affected his reasonable alternatives.

[37] In considering the Claimant's reasonable alternatives, the General Division noted his statements that he was not in a right frame of mind and could barely hang on in his job. It acknowledged that his uncertain job status was affecting his mental health.

[38] However, it noted that the Claimant was not faced with an urgent situation. He had a contract to continue working for another two months. It found that he could have sought work for the remainder of his contract term.

[39] The Claimant may not like how the General Division weighed the evidence and may disagree with its conclusions, but I can only intervene where I find that the General Division made one of the errors described in the grounds of appeal. I am not authorized to re-weigh or re-evaluate the evidence to reach a different conclusion.¹³

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

Conclusion

[41] I am refusing leave to appeal. This means that the appeal will not proceed.

Stephen Bergen
Member, Appeal Division

¹³See for example: *Hideq v Canada (Attorney General)*, 2017 FC 439, *Parchment v Canada (Attorney General)*, 2017 FC 354, *Johnson v Canada (Attorney General)*, 2016 FC 1254, *Marcia v Canada (Attorney General)*, 2016 FC 1367.