



Citation: *ML v Canada Employment Insurance Commission*, 2023 SST 1145

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

**Leave to Appeal Decision**

**Applicant:** M. L.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated May 30, 2023  
(GE-22-3811)

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**Tribunal member:** Melanie Petrunia

**Decision date:** August 22, 2023

**File number:** AD-23-618

## Decision

[1] Leave (permission) to appeal is refused. The appeal will not proceed.

## Overview

[2] The Applicant, M. L. (Claimant), worked as a cleaner. She left her job and applied for employment insurance (EI) benefits. The Respondent, the Canada Employment Insurance Commission (Commission) decided that the Claimant voluntarily left her job without just cause and could not be paid benefits.

[3] The Claimant appealed this decision to the Tribunal's General Division and her appeal was dismissed. The General Division found that the Claimant did not have just cause to quit her job because there were reasonable alternatives to leaving when she did.

[4] The Claimant now wants to appeal the General Division decision to the Tribunal's Appeal Division. However, she needs permission for her appeal to move forward.

[5] I have to decide whether there is some reviewable error of the General Division on which the appeal might succeed. I am refusing leave to appeal because the Claimant's appeal has no reasonable chance of success.

## Issue

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

## I am not giving the Claimant permission to appeal

[7] The legal test that the Claimant needs to meet on an application for leave to appeal is a low one: Is there any arguable ground on which the appeal might succeed?<sup>1</sup>

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<sup>1</sup> This legal test is described in cases like *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12 and *Ingram v Canada (Attorney General)*, 2017 FC 259 at para 16.

[8] To decide this question, I focused on whether the General Division could have made one or more of the relevant errors (or grounds of appeal) listed in the *Department of Employment and Social Development Act* (DESD Act).<sup>2</sup>

[9] An appeal is not a rehearing of the original claim. Instead, I must decide whether the General Division:

- a) failed to provide a fair process;
- b) failed to decide an issue that it should have, or decided an issue that it should not have;
- c) based its decision on an important factual error;<sup>3</sup> or
- d) made an error in law.<sup>4</sup>

[10] Before the Claimant can move on to the next stage of the appeal, I have to be satisfied that there is a reasonable chance of success based on one or more of these grounds of appeal. A reasonable chance of success means that the Claimant could argue her case and possibly win. I should also be aware of other possible grounds of appeal not precisely identified by the Claimant.<sup>5</sup>

### **There is no arguable case that the General Division erred**

[11] In her application for leave to appeal, the Claimant did not specify any errors of the General Division. She was asked to provide more information about her reasons for appealing.

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<sup>2</sup> DESD Act, s 58(2).

<sup>3</sup> The language of section 58(1)(c) actually says that the General Division will have erred if it bases its decision on a finding of fact that it makes in a perverse or capricious manner or without regard for the material before it. The Federal Court has defined perverse as “willfully going contrary to the evidence” and defined capricious as “marked or guided by caprice; given to changes of interest or attitude according to whim or fancies; not guided by steady judgment or intent” *Rahi v Canada (Minister of Citizenship and Immigration)* 2012 FC 319.

<sup>4</sup> This paraphrases the grounds of appeal.

<sup>5</sup> *Karadeolian v Canada (Attorney General)*, 2016 FC 615; *Joseph v Canada (Attorney General)*, 2017 FC 391.

[12] The Claimant wrote to the Tribunal and said that she disagrees with the General Division decision. She feels like the General Division treated it as a family problem. She says that she went to work to clean as asked of her and worked when the employer could not find anyone else.<sup>6</sup>

[13] The Claimant argues that, when she worked with her boss, she was doing 90% of the work. This went on for a few months until she confronted the other business owner and requested a raise. The owner swore at her, and the Claimant quit because she felt she wasn't getting anywhere.<sup>7</sup>

[14] The law says that a person has just cause for voluntarily leaving their job if, having regard to all the circumstances, they had no reasonable alternative to quitting. The law provides a list of relevant circumstances, including any of the following: antagonism with a supervisor and working conditions that constitute a danger to health and safety.<sup>8</sup>

[15] The General Division had to decide whether the Claimant left her job without just cause. It considered whether there was antagonism with a supervisor that the Claimant was not primarily responsible for and found that this circumstance did not apply.<sup>9</sup>

[16] The Claimant had argued that the job was causing her stress and anxiety and negatively affecting her mental health. The General Division considered whether the working conditions constituted a danger to her health and safety and found that there was no evidence in support.<sup>10</sup>

[17] The General Division found that the Claimant approached her boss about a raise because she was doing the majority of the work on her cleaning shifts.<sup>11</sup> It found that

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<sup>6</sup> AD1B-2

<sup>7</sup> AD1B-2

<sup>8</sup> See sections 29(c)(i), 29(c)(iv) and 29(c)(x) of the EI Act.

<sup>9</sup> General Division decision at paras 29 to 35.

<sup>10</sup> General Division decision at para 40.

<sup>11</sup> General Division decision at para 51.

the boss, who was her nephew, likely yelled at the Claimant and that the Claimant was also likely yelling at him.<sup>12</sup>

[18] The General Division also found that the job was likely causing the Claimant stress and anxiety and that she was frustrated by the working conditions. However, it found that the Claimant did not provide a medical note or any other evidence suggesting that she had to leave her job due to health concerns.<sup>13</sup> The General Division also considered other circumstances, such as concerns the Claimant had with her pay.<sup>14</sup>

[19] The General Division then considered whether the Claimant had reasonable alternatives to quitting her job when she did. It found that there was no just cause because a reasonable alternative to leaving for the Claimant was to look for another job before she quit.<sup>15</sup> It found that the Claimant had been unhappy for months and made no efforts to find other work before she left her job.<sup>16</sup>

[20] The Claimant's arguments do not have a reasonable chance of success. There is no arguable case that the General Division made an error of fact about any of its key findings. I have reviewed the file and examined the General Division decision.<sup>17</sup> I did not find any evidence that it might have ignored or misinterpreted.

[21] The General Division stated and applied the law correctly when it decided that the Claimant did not have just cause to leave her job.

[22] The Claimant made the same arguments before the General and they were taken into consideration in its decision. I cannot reweigh the evidence in order to come to a different conclusion more favourable to the Claimant. The Appeal Division has a

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<sup>12</sup> General Division decision at para 31.

<sup>13</sup> General Division decision at para 40.

<sup>14</sup> General Division decision at paras 42 to 50.

<sup>15</sup> General Division decision at para 55.

<sup>16</sup> General Division decision at para 59.

<sup>17</sup> The Federal Court has said that I should do this in decisions like *Griffin v Canada (Attorney General)*, 2016 FC 874; and *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

limited role, so I cannot intervene in order to reweigh the evidence about the application of settled legal principles to the facts of the case.<sup>18</sup>

[23] Aside from the Claimant's arguments, I have also considered the other grounds of appeal. The Claimant has not pointed to any procedural unfairness on the part of the General Division, and I see no evidence of procedural unfairness. There is no arguable case that the General Division made an error of jurisdiction.

[24] The Claimant has not identified any errors of the General Division upon which the appeal might succeed. As a result, I am refusing leave to appeal.

## **Conclusion**

[25] Permission to appeal is refused. This means that the appeal will not proceed.

Melanie Petrunia  
Member, Appeal Division

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<sup>18</sup> See *Garvey v Canada (Attorney General)*, 2018 FCA 118.