



Citation: *FP v Canada Employment Insurance Commission*, 2023 SST 1155

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

# **Leave to Appeal Decision**

**Applicant:** F. P.

**Respondent:** Canada Employment Insurance Commission

---

**Decision under appeal:** General Division decision dated June 27, 2023  
(GE-23-928)

---

**Tribunal member:** Melanie Petrunia

**Decision date:** August 23, 2023

**File number:** AD-23-672

## **Decision**

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

## **Overview**

[2] The Applicant, F. P. (Claimant), quit his seasonal job as a skilled labourer and applied for employment insurance (EI) benefits.

[3] The Respondent, the Canada Employment Insurance Commission (Commission) decided that the Claimant voluntarily left his job without just cause and could not be paid benefits.

[4] The Claimant appealed this decision to the Tribunal's General Division. He argued that he quit because a number of factors were creating an unsafe workplace. The General Division found that the Claimant did not have just cause to quit his job because there were reasonable alternatives to leaving when he did. It dismissed his appeal.

[5] The Claimant now wants to appeal the General Division decision to the Tribunal's Appeal Division. However, he needs permission for his appeal to move forward. He argues that the General Division made important errors of fact in its decision.

[6] 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.

## **Issues**

[7] The issues are:

- a) Is there an arguable case that the General Division made important errors of fact?

- b) Does the Claimant raise any other reviewable errors of the General Division upon which the appeal might succeed?

## **I am not giving the Claimant permission to appeal**

[8] 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>

[9] 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>

[10] 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>

[11] 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

---

<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.

<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.

argue his 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**

[12] In his application for leave to appeal, the Claimant argues that the General Division compared him to a firefighter, who would have proper gear and training. He says that he explained that the job had changed and so did his age. The risks to health increased over time and he was only provided with an air-conditioned truck to cool down in once.<sup>6</sup>

[13] The Claimant had argued at the General Division that the logbooks were being falsified. The General Division found that this was not credible.<sup>7</sup> In his application for leave to appeal, the Claimant says that he disagrees with the General Division's finding that he was not telling the truth.<sup>8</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 working conditions that constitute a danger to health and safety.<sup>9</sup>

[15] The Claimant worked seasonally for approximately 15 years. His work involved line painting on roads and other related tasks.<sup>10</sup> In the year that he quit, the Claimant said that his work required him to spend more time standing on asphalt in extreme heat. He suffered from heat stroke twice.<sup>11</sup>

[16] The Claimant also said that other employees were required to complete logbooks reporting the number of hours they spent driving. He said that the employer made the

---

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

<sup>6</sup> AD1-3

<sup>7</sup> General Division decision at para 38.

<sup>8</sup> AD1-3

<sup>9</sup> See section 29(c)(iv) of the EI Act.

<sup>10</sup> General Division decision at para 17.

<sup>11</sup> General Division decision at para 22.

driver lie so they could drive more hours, and this resulted in drivers falling asleep and causing a risk to his safety.<sup>12</sup>

[17] The General Division had to decide whether the Claimant left his job without just cause. It considered the Claimant's arguments that he was forced to work in extreme heat and that the employer made other employees underreport the hours that they were driving in their logbooks.

[18] The General Division considered whether the working conditions constituted a danger to the Claimant's health and safety. It found that the Claimant has returned to this seasonal work for many years and was aware of the risks inherent in road work during the summer.<sup>13</sup> While the conditions may have been worse in the year he quit, the General Division found that they did not present a danger to the Claimant's health and safety.<sup>14</sup>

[19] The General Division did not find the Claimant's testimony concerning the falsifying of logbooks to be credible. It explained its reasons for this finding.<sup>15</sup>

[20] The General Division then considered whether the Claimant had reasonable alternatives to quitting his job when he did. It found that there was no just cause because a reasonable alternative to leaving for the Claimant was to find another job before he quit.<sup>16</sup>

[21] The General Division also found that the Claimant could have refused work that was unsafe.<sup>17</sup> He testified that this is what he had planned to do if he felt at risk during the two week notice period that he worked.<sup>18</sup>

[22] The Claimant's arguments do not have a reasonable chance of success. The General Division did not compare the Claimant's circumstances to that of a firefighter. It

---

<sup>12</sup> General Division decision at paras 26 and 27.

<sup>13</sup> General Division decision at para 34.

<sup>14</sup> General Division decision at para 35.

<sup>15</sup> General Division decision at paras 38 to 41.

<sup>16</sup> General Division decision at para 44.

<sup>17</sup> General Division decision at para 47.

<sup>18</sup> General Division decision at para 46.

used this as an example to illustrate that different jobs come with different risks and that some known risks are accepted depending on the nature of the job.<sup>19</sup>

[23] The General Division acknowledged and considered the Claimant's arguments that the job had changed in the year that he quit. 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>20</sup> I did not find any evidence that it might have ignored or misinterpreted.

[24] The General Division stated and applied the law correctly when it decided that the Claimant did not have just cause to leave his job. It did not agree with the Claimant and explained, with reference to the evidence, why it did not agree.

[25] I cannot reweigh the evidence in order to come to a different conclusion more favourable to the Claimant. The Appeal Division has a 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>21</sup>

[26] 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 or an error of law.

[27] 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.

---

<sup>19</sup> General Division decision at paras 32 and 33.

<sup>20</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.

<sup>21</sup> See *Garvey v Canada (Attorney General)*, 2018 FCA 118.

## **Conclusion**

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

Melanie Petrunia  
Member, Appeal Division