



Citation: *DN v Canada Employment Insurance Commission*, 2023 SST 1027

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant:	D. N.
Respondent:	Canada Employment Insurance Commission
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Decision under appeal:	General Division decision dated June 8, 2023 (GE-23-59)
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Tribunal member:	Solange Losier
Decision date:	July 31, 2023
File number:	AD-23-648

Decision

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

Overview

[2] D. N. is the Claimant in this case. He worked at a hardware store for around 37 years. He quit his job in Ontario and moved to Newfoundland. He applied for Employment Insurance (EI) regular benefits.

[3] The Canada Employment Insurance Commission (Commission) decided that he could not get EI benefits because he quit his job without just cause.¹ It said there were reasonable alternatives.

[4] The General Division came to the same conclusion.² It said that the Claimant did not have just cause to quit his job on the basis that he had to provide care to his wife or that the workplace was stressful and toxic. It said there were reasonable alternatives.

[5] The Claimant is now asking for permission to appeal the General Division decision to the Appeal Division.³ He argues that the General Division made an error of fact because its decision did not give enough weight to the reasons that he left his job.⁴

[6] I am denying the Claimant's request for permission to appeal because it has no reasonable chance of success.

Issue

[7] Is there an arguable case that the General Division based its decision on an important error of fact?

¹ See reconsideration decision at page GD3-33. Section 30(1) of the *Employment Insurance Act* (EI Act) says you are disqualified from receiving EI benefits if you voluntarily leave your job without just cause.

² See the General Division decision at pages AD1A-1 to AD1A-8.

³ See Application to the Appeal Division at AD1-1 to AD1-7.

⁴ See page AD1-3.

Analysis

[8] An appeal can proceed only if the Appeal Division gives permission to appeal.

[9] I must be satisfied that the appeal has a reasonable chance of success.⁵ This means that there must be some arguable ground upon which the appeal might succeed.⁶

[10] The possible grounds of appeal to the Appeal Division are that the General Division:

- proceeded in a way that was unfair;
- acted beyond its powers or refused to exercise those powers;
- made an error of law;
- based its decision on an important of fact.⁷

[11] For the Claimant's appeal to proceed, I have to find that there is a reasonable chance of success on one of the grounds of appeal.

[12] An error of fact happens when the General Division has "based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it".⁸

[13] This means that I can intervene if the General Division based its decision on an important mistake about the facts of the case. This involves considering some of the following questions:⁹

- Does the evidence squarely contradict one of the General Division's key findings?

⁵ See section 58(2) of the *Department of Employment and Social Development Act* (DESD Act).

⁶ See *Osaj v Canada (Attorney General)*, 2016 FC 115.

⁷ See section 58(1) of the DESD Act.

⁸ See section 58(1)(c) of the DESD Act.

⁹ This is a summary of the Federal Court of Appeal's decision in *Walls v Canada (Attorney General)*, 2022 FCA 47 at paragraph 41.

- Is there no evidence that could rationally support one of the General Division's key findings?
- Did the General Division overlook critical evidence that contradicts one of its key findings?

[14] Not all errors of fact will allow me to intervene. For example, if the General Division made a mistake about a minor fact in this case that does not impact the outcome of the case, then I can't intervene.

I am not giving the Claimant permission to appeal

[15] There is no arguable case that the General Division based its decision on an important mistake about the facts of the case, so I am not giving the Claimant permission to appeal. My reasons follow.

[16] The Claimant argues the General Division did not give enough weight to main reason he left his job of 37 years.¹⁰ There were several reasons he left, but the most important one was to obtain additional family support for his disabled wife. He has family in Newfoundland who can help his wife while he works. Also, staying in Ontario meant that his wife would have been alone for extended periods of time. He cannot afford to pay for any help.

- It is not arguable that the General Division made an error of fact

[17] The General Division had to decide whether the Claimant voluntarily left his job without just cause.

[18] The law says that just cause for voluntarily leaving a job exists if a person had no reasonable alternative to leaving, having regard to all the circumstances.¹¹ That can

¹⁰ See Claimant's arguments at AD1-3.

¹¹ See section 29(c) of the EI Act.

include an obligation to care for a member of the immediate family.¹² It can also include working conditions that constitute a danger to health and safety.¹³

[19] The General Division decided that the Claimant voluntarily left his job when he quit on August 25, 2022.¹⁴ This was not disputed between the parties.

[20] The General Division considered whether the Claimant had an obligation to care for his wife.¹⁵ The Claimant told the General Division that his wife had 2-3 back surgeries the last few years and she could not do much for herself.¹⁶

[21] The General Division acknowledged that he was providing care for his wife, but said it was not urgent and that his wife did not require full time care.¹⁷ Rather, it said that the Claimant just wanted additional support from family in Newfoundland.

[22] The General Division also considered whether the Claimant's working conditions were a danger to his health or safety because of a stressful and toxic workplace.¹⁸ The Claimant told the General Division at the hearing that the job was overwhelming, that he had to babysit the newer employees, load trucks, as well as do his own job.¹⁹

[23] The General Division ultimately decided that the Claimant did not have just cause to leave his job.²⁰ It said that he had two reasonable alternatives.²¹ First, it said that the Claimant could have attempted to discuss concerns with his employer. It relied on a Court case that says claimants have to discuss their concerns with their employer

¹² See section 29(c)(v) of the EI Act.

¹³ See section 29(c)(iv) of the EI Act.

¹⁴ See paragraphs 9 and 10 of the General Division decision.

¹⁵ See section 29(c)(v) of the EI Act. One of the circumstances in law is an obligation to care for a child or a member of the immediate family.

¹⁶ See hearing recording at 7:00.

¹⁷ See paragraph 32 of the General Division decision.

¹⁸ See section 29(c)(iv) of the EI Act. One of the circumstances in law is working conditions that constitutes a danger to health or safety.

¹⁹ See hearing recording at 15:06 and 16:00.

²⁰ See paragraph 36 of the General Division decision.

²¹ See paragraph 37 of the General Division decision.

before leaving his job.²² Second, it said that he could have looked for another job prior to quitting.

[24] There is no arguable case that the General Division made an error of fact about any of its key findings. Specifically, the General Division did consider that the Claimant's argument that had to care for his wife and why he moved to Newfoundland. It understood the Claimant's evidence and was free to assign the weight based on the evidence it heard.

[25] The Appeal Division has a limited role. It is not a new hearing. I cannot intervene in order to reweigh the evidence so that there is a more favourable conclusion for him.²³

[26] There are no other reasons for giving the Claimant permission to appeal. I reviewed the file, listened to the audio recording of the General Division hearing, and examined the General Division decision.²⁴ I did not find any evidence that it might have ignored or misinterpreted.

[27] So, there is no arguable case that the General Division made an error of fact.

Conclusion

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

Solange Losier
Member, Appeal Division

²² See *Canada (Attorney General) v Hernandez*, 2007 FCA 320 and paragraph 27 of the General Division decision.

²³ See *Garvey v Canada (Attorney General)*, 2018 FCA 118.

²⁴ 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.