



[TRANSLATION]

Citation: *SG v Canada Employment Insurance Commission*, 2023 SST 1422

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: S. G.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated
July 25, 2023 (GE-23-1225)

Tribunal member: Pierre Lafontaine

Decision date: October 30, 2023

File number: AD-23-808

Decision

[1] Permission to appeal is refused. The appeal will not proceed.

Overview

[2] The Applicant (Claimant) left her job and applied for Employment Insurance benefits. The Respondent (Commission) looked at her reasons for leaving. It decided that she voluntarily left (or chose to quit) her job without just cause, so it was not able to pay her benefits.

[3] The Claimant asked the Commission to reconsider, but it upheld its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[4] The General Division found that the Claimant chose to leave her job because the employer refused to let her wear a religious symbol around her neck, over her clothes. The General Division found that it was an object that could end up in a dish. It found that the Claimant had reasonable alternatives to leaving her job. She could have worn her rosary under her clothes, as suggested by her employer, to comply with hygiene standards. The General Division decided that that the Claimant did not have just cause for leaving her job when she did.

[5] The Claimant seeks permission from the Appeal Division to appeal the General Division decision. She argues that the General Division made an error of law and an important error of fact.

[6] I am refusing permission to appeal because the Claimant has not raised a ground of appeal based on which the appeal has a reasonable chance of success.

Issue

[7] Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

Analysis

[8] Section 58(1) of the *Department of Employment and Social Development Act* specifies the only grounds of appeal of a General Division decision. These reviewable errors are the following:

1. The General Division hearing process was not fair in some way.
2. The General Division did not decide an issue it should have decided. Or, it decided something it did not have the power to decide.
3. The General Division based its decision on an important error of fact.
4. The General Division made an error of law when making its decision.

[9] An application for permission to appeal is a preliminary step to a hearing on the merits. It is an initial hurdle for the Claimant to meet, but it is lower than the one that must be met at the hearing of the appeal on the merits. At the permission to appeal stage, the Claimant does not have to prove her case; she must instead establish that the appeal has a reasonable chance of success. In other words, she must show that there is arguably a reviewable error based on which the appeal might succeed.

[10] I will give permission to appeal if I am satisfied that at least one of the Claimant's stated grounds of appeal gives the appeal a reasonable chance of success.

Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

[11] The Claimant argues that she left her job because of religious discrimination. She argues that this is a constitutional right. She bases her position on the Digest of Benefit Entitlement Principles (Digest). She argues that the General Division did not recognize that the employer's words were simply an invitation to quit. She takes issue with the fact that her file was misunderstood at every level of government.

[12] The issue before the General Division was whether the Claimant voluntarily left her job without just cause within the meaning of the *Employment Insurance Act*.¹ This needs to be determined based on the circumstances that existed when the Claimant left.

[13] The General Division found that the Claimant chose to leave her job because the employer refused to let her wear a religious symbol over her clothes. Since a new employee was allowed to wear a hijab, the Claimant felt that she was also entitled to wear a religious symbol without discrimination.

[14] The Claimant was with the employer for 27 years. The evidence shows that she could have continued working for her employer but chose to leave when it refused to let her wear her rosary around her neck, over her clothes. On her application for benefits, she acknowledged that she quit because of discrimination.²

[15] When interviewed by the Commission, the Claimant acknowledged that she chose to leave her job when her employer refused to let her wear her rosary.³ The employer also indicated that she quit on the Record of Employment.⁴

[16] As the General Division noted, the employer could not let the Claimant wear something that could fall into food. It proposed a compromise. Specifically, she could wear her rosary under her clothes. That way, she could exercise her religious beliefs, and it could meet its legal obligations in terms of food hygiene. The Claimant refused and chose to leave immediately.

[17] The General Division found that the Claimant had reasonable alternatives to leaving her job. She could have accepted the employer's proposed compromise and worn her rosary under her clothes to comply with hygiene standards. This would have given her enough time to find a more suitable job.

¹ In accordance with sections 29 and 30 of the *Employment Insurance Act*.

² See GD3-6, GD3-7, GD3-8, and GD3-11.

³ See GD3-26 and GD3-30.

⁴ See GD3-24.

[18] The General Division decided that the Claimant did not have just cause for leaving her job when she did.

[19] Although I am not bound by the Digest, I note that it says that jurisprudence recognizes the right to leave employment **when an employer is not willing to accommodate a person** who wishes to express their religious beliefs, which is clearly not the case here. The Digest mentions that a reasonable alternative would be for the claimant to explore **a compromise** that respects their religious beliefs.⁵

[20] In my view, the General Division correctly stated the legal test for voluntary leaving. It applied this test to the facts of the case and looked at whether, after considering all of the circumstances, the Claimant had no reasonable alternative to leaving her job.

[21] The Claimant clearly disagreed with the employer's position to allow the new employee to wear a hijab contrary to its usual guidelines. However, the Claimant had reasonable alternatives to leaving her job when she did.

[22] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for permission to appeal, I have no choice but to find that the appeal has no reasonable chance of success.

Conclusion

[23] Permission to appeal is refused. The appeal will not proceed.

Pierre Lafontaine
Member, Appeal Division

⁵ See Chapter 6, section 6.8.1, No. 12 of the Digest of Benefit Entitlement Principles.