Citation: *SN v Canada Employment Insurance Commission*, 2023 SST 1284

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	S. N.
Representative:	F. N.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated May 15, 2023 (GE-23-505)

Tribunal member:	Solange Losier
Decision date:	September 18, 2023
File number:	AD-23-544

Decision

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

Overview

[2] S. N. is the Claimant in this case. He worked as a Field Technologist in Fort McMurray. He quit his job, returned home to Edmonton and applied for Employment Insurance (EI) regular benefits.

[3] The Canada Employment Insurance Commission (Commission) decided that he was not allowed to get EI benefits because he quit his job without just cause.[1]

[4] The General Division agreed with the Commission.[2] It considered his reasons for leaving the job, but decided that he did not have just cause. 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 says that the General Division didn't follow procedural fairness and made an error of jurisdiction, error of law and an important error of fact.

[6] I am denying the Claimant's request for permission to appeal because it has no reasonable chance of success.[4]

I am not accepting the new evidence

[7] In the Claimant's leave to appeal application, he submitted a medical note dated May 19, 2023.[5] The medical note says that he has been instructed not to work from October 3, 2022 and remains off work until present day. It further states that he stopped

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[1] See initial decision at page GD3-28 and reconsideration decision at page GD3-40. Section 30(1) of the *Employment Insurance Act* (EI Act) disqualifies a claimant receiving any benefits if the claimant voluntarily leaves their job without just cause.
[2] See General Division decision at pages AD1A-1 to AD1A-11.
[3] See application to the Appeal Division at pages AD1-1 to AD1-11.
[4] See section 58(2) of the *Department of Employment and Social Development Act* (DESD Act).
[5] See medical note at page AD1-8.

working due to pneumonia and couldn't return due to the cold weather affecting his lungs.

[8] The Appeal Division generally does not accept new evidence, but there are some exceptions.[6] For example, I can accept new evidence if it provides one of the following:

- general background information only
- if it highlights findings made without supporting evidence
- shows that the Tribunal acted unfairly

[9] This is new evidence that was not before the General Division when it made its decision. The medical note is dated *after* the General Division's decision was issued.[7] None of the exceptions apply, so I cannot accept the medical note.[8]

[10] The Appeal Division's role is to review the General Division's decision based on the same evidence they are not redos based on updated evidence.[9]

Issue

[11] Is there an arguable case that the General Division made a reviewable error?

Analysis

[12] An appeal can proceed only if the Appeal Division gives permission to appeal.[10]

[13] I must be satisfied that the appeal has a reasonable chance of success.[11] This means that there must be some arguable ground that the appeal might succeed.[12]

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[6] See *Sharma* v *Canada (Attorney General),* 2018 FCA 48 and *Sibbald v Canada (Attorney General),* 2022 FCA 157.
[7] The General Division's decision was issued on May 13, 2023.
[8] See medical note at page AD1-8.
[9] See *Gittens v Canada (Attorney General),* 2019 FCS 256, at paragraph 13.
[10] See section 56(1) DESD Act.
[11] See section 58(2) of the DESD Act.
[12] See *Osaj v Canada (Attorney General),* 2016 FC 115.

[14] I can only consider certain types of errors. I have to focus on whether the General Division could have made one or more of the relevant errors (this is called the "grounds of appeal").[13]

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

The Claimants says that the General Division made errors

[16] The Claimant argues that the General Division made several errors, including that it didn't follow procedural fairness; made an error of jurisdiction; made an error of law and made an important error of fact.[14]

[17] I have summarized the Claimant's arguments as follows:

- The General Division referred to the doctor's notes he submitted as illegible. He says it shouldn't have ignored the doctor's notes and asked him to bring one that could be read.
- He had just cause to leave his job based on sections are s.29(c)(ii); s.29(c)(iv) and s.29(c)(viii) of the of the *Employment Insurance Act* (EI Act).
- The Tribunal didn't consider a document from human resources that confirms they only have field jobs available, there is compulsory overtime and no substitution for heavy lifting or cold weather.[15]
- There was no alternate job for him except for working in the field.
- There was compulsory overtime everyday for 15-20 days straight and then added travel time to get to and from work.

[13] See section 58(1) of the DESD Act.
[14] See pages AD1-3 and AD1-9 to AD1-11.
[15] See page GD3-36.

- He had pneumonia and saw his doctor many times over four months. It was a life or death scenario, so he resigned and got treatment because he could not continue working for the upcoming winter.

- He was unable to perform his work duties because it was beyond his strength and he has the right to take of himself, which includes the right to quit his job.

- The Tribunal rejected his right to live with his spouse in Edmonton and this is a clear contradiction of the regulation.

There is no arguable case that the General Division didn't follow procedural fairness

[18] If the General Division didn't follow a fair process, it means that it didn't follow procedural fairness.[16]

[19] The Claimant says that the General Division referred to the doctor's notes he submitted as illegible. He argues that the General Division should not have ignored the doctor's notes and asked him to bring one that could be read.

[20] At the General Division hearing, the Claimant testified that he had medical notes that he wanted to submit from 3 or 4 medical visits over a period of 4 months. [17] The General Division told him that he could submit them after the hearing.

[21] The General Division's decision says that the Claimant submitted medical notes after the hearing.[18] It said that the notes are difficult to read, but do show that the Claimant had some cold and flu symptoms with dates in September, October and December 2022.

[22] It is not arguable that the General Division didn't follow procedural fairness. The General Division allowed the Claimant to submit the medical notes after the hearing. It did not ignore the medical notes or say that they were illegible. The General Division did

[16] See section 58(1)(a) of the DESD Act.
[17] See hearing recording at 16:42 to 19:00.
[18] See paragraph 31 of the General Division decision.

say that they were “difficult to read” and accepted that the Claimant was experiencing cold and flu symptoms during the relevant period. There is no reasonable chance of success on this ground.

There is no arguable case that the General Division made an error of jurisdiction

[23] An error of jurisdiction means that the General Division didn’t decide an issue it had to decide or decided an issue it did not have the authority to decide.[19]

[24] The Claimant didn’t point any specific error of jurisdiction that the General Division made.

[25] The General Division had to decide whether Claimant voluntarily left his job without just cause.[20]

[26] I see no indication that the General Division made an error of jurisdiction. The General Division decided that the Claimant was disqualified from receiving EI benefits because he voluntarily left his job without just cause.[21] According to the General Division, there were reasonable alternatives to leaving his job.

[27] It is not arguable that the General Division made an error of jurisdiction. The General division’s decision shows that it only decided the issues that it had the authority to decide. There is no reasonable chance of success on this ground.

There is no arguable case that the General Division made an error of law

[28] An error of law can happen when the General Division does not apply the correct law, or uses the correct law but misunderstands what it means or how to apply it.[22]

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[19] See section 58(1)(a) of the DESD Act.
[20] See section 29(c) of the EI Act.
[21] See paragraphs 2, 67 and 69 of the General Division decision.
[22] See section 58(1)(b) of the DESD Act.

[29] The Claimant did not point to a specific error of law that the General Division made. In his appeal to the Appeal Division, he simply restates the arguments he made to the General Division about why he had just cause for leaving his job.

[30] 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. That can include the following circumstances:

- Obligation to accompany a spouse, common-law partner or dependent child to another residence;[23]
- Working conditions that constitute a danger to health or safety;[24]
- Excessive overtime work or refusal to pay for overtime work.[25]

[31] The General Division considered the Claimant's specific circumstances, but decided that he didn't have just cause because there were reasonable alternatives to leaving his job.[26]

[32] The Claimant is trying to reargue his case because he disagrees with the General Division's findings and decision. However, an appeal to the Appeal Division is not a new hearing. I cannot reweigh the evidence in order to come to a different conclusion that is more favourable for the Claimant.[27]

[33] It is not arguable that the General Division made an error of law. It stated and applied the law correctly when it decided that the Claimant did not have just cause to leave his job.[28] It also considered all of the circumstances raised by the Claimant.

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[23] See section 29(c)(ii) of the EI Act.
[24] See section 29(c)(iv) of the EI Act.
[25] See section 29(c)(viii) of the EI Act.
[26] See paragraphs 18-20 of the General Division decision.
[27] See G*arvey* v *Canada (Attorney General)*, 2018 FCA 118, at paragraph 11.
[28] See paragraphs 13-17 of the General Division decision.

There is no arguable case that the General Division made an error of fact

[34] An error of fact happens when the General Division makes its decision based on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it.[29] This means that I can intervene if the General Division bases its decision on an important mistake about the facts of the case.

[35] The Claimant restates that he had to accompany his spouse and move back to Edmonton. He got pneumonia and his health got dangerously worse risking his life. He was not physically capable of doing the heavy lifting required outside in the cold weather, especially since winter was coming. As well, he was required to work overtime for 15-20 days starting and then there was travel time of 3 hours to get to the work site.

[36] The General Division considered all of the above circumstances. It decided that the Claimant had reasonable alternatives to leaving his job including the following:[30]

- He could have consulted with his doctor to determine whether he could continue working or taken a sick leave;
- He could have asked his employer for a leave of absence and looked for alternate work prior to quitting;
- He could have asked his employer for more robust cold weather gear to protect him from the elements.

[37] There is no arguable case that the General Division made an error of fact about any of its key findings. I did not find any evidence that it might have ignored or misinterpreted. The Claimant disagrees with the General Division's key findings, but that alone doesn't allow me to intervene. So, there is no reasonable chance of success that the General Division based its decision on an important error of fact.

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[29] See section 58(1)(c) of the DESD Act.
[30] See paragraphs 63-66 of the General Division decision.

I am not giving the Claimant permission to appeal

[38] There is no arguable case that the General Division made a reviewable error.[31] In addition to the Claimant's arguments, I also reviewed the file, listened to the audio recording of the General Division hearing, and examined the General Division decision.[32]

Conclusion

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

Solange Losier
Member, Appeal Division

[31] See section 58(1) of the DESD Act.
[32] 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.