



Citation: *RB v Canada Employment Insurance Commission*, 2023 SST 1420

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

# **Leave to Appeal Decision**

**Applicant:** R. B.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated September 11, 2023  
(GE-23-1487)

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**Tribunal member:** Solange Losier

**Decision date:** October 30, 2023

**File number:** AD-23-863

## Decision

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

## Overview

[2] R. B. is the Claimant in this case. She worked for a bank. When she stopped working, she applied for Employment Insurance (EI) regular benefits.

[3] The Canada Employment Insurance Commission (Commission) decided that she could not get EI regular benefits because she voluntarily left her job without just cause.<sup>1</sup> At the same time, the Commission also decided that she had not proven she was available for work.<sup>2</sup>

[4] The General Division came to the same conclusion.<sup>3</sup> It decided that the Claimant voluntarily left her job without just cause when she retired on December 30, 2022. As well, it found that she had not proven her availability for work from January 2, 2023 to March 31, 2023. Because of that, she could not be paid EI regular benefits.

[5] The Claimant is now asking for permission to appeal the General Division decision to the Appeal Division.<sup>4</sup> She argues that the General Division made an important error of fact because she could not seek other job opportunities as was too busy performing her current job at the same time.

[6] I am denying the Claimant's request for permission to appeal because there is no reasonable chance of success.<sup>5</sup>

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<sup>1</sup> See initial decision at page GD3-30 and reconsideration decision at pages GD3-40 to GD3-41 and section 29(c) of the *Employment Insurance Act* (EI) Act.

<sup>2</sup> See sections 18(1)(a) and 50 of the EI Act.

<sup>3</sup> See General Division decision at pages AD1A-1 to AD1A-21.

<sup>4</sup> See application to the Appeal Division at pages AD1-1 to AD1-7.

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

## Issue

[7] Is there an arguable that the General Division based its decision on an important error of fact when it decided that the Claimant voluntarily left her job without just cause?

## Analysis

[8] An appeal can proceed only if the Appeal Division gives permission to appeal.<sup>6</sup>

[9] I must be satisfied that the appeal has a reasonable chance of success.<sup>7</sup> This means that there must be some arguable ground that the appeal might succeed.<sup>8</sup>

[10] The possible grounds of appeal to the Appeal Division are that the General Division:<sup>9</sup>

- 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 error of fact

[11] For the Claimant's appeal to proceed to next steps, I have to find that there is a reasonable chance of success on one of the grounds of appeal.<sup>10</sup>

[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".<sup>11</sup>

[13] This means that I can intervene if the General Division based its decision on an important mistake about the facts of the case. However, not all errors of fact will allow me to

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<sup>6</sup> See section 56(1) of the DESD Act.

<sup>7</sup> See section 58(2) of the DESD Act.

<sup>8</sup> See *Osaj v Canada (Attorney General)*, 2016 FC 115.

<sup>9</sup> The relevant errors are formally known as "grounds of appeal". They are listed under section 58(1) of the DESD Act. These errors are also explained on the Notice of Appeal to the Appeal Division. See ADN1-3.

<sup>10</sup> See section 58(2) of the DESD Act.

<sup>11</sup> See section 58(1)(c) of the DESD Act.

intervene. An error of fact needs to be important enough that the General Division relied on it to make a finding that impacted the outcome of the decision.

[14] This involves considering some of the following questions:<sup>12</sup>

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

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

– **The Claimant says that the General Division made an important error of fact**

[15] The Claimant argues that the General Division made an important error of fact. Specifically, she argues that she could not seek other job opportunities because she was too busy performing her current job at the same time.<sup>13</sup>

– **It is not arguable that the General Division based its decision an important error of fact**

[16] There were two decisions made by the General Division.

[17] The General Division first decided that the Claimant didn’t have just cause to voluntarily leave her employment, so she was disqualified from getting EI benefits.<sup>14</sup> This followed by its decision on the Claimant’s availability finding that she had not proven her availability for work, so she also disentitled to EI regular benefits.<sup>15</sup>

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<sup>12</sup> This is a summary of the Federal Court of Appeal's decision in *Walls v Canada (Attorney General)*, 2022 FCA 47 at paragraph 41.

<sup>13</sup> See page AD1-3.

<sup>14</sup> See section 29(c) of the EI Act.

<sup>15</sup> See section 18(1)(a) of the EI Act.

[18] The Claimant's application to the Appeal Division focuses only on the voluntary leave decision only, so that is what I will focus on.<sup>16</sup>

[19] 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.<sup>17</sup>

[20] There is a list of relevant circumstances to consider such as: a significant change in work duties and working conditions that constitute a danger to health or safety.<sup>18</sup>

[21] In this case, the General Division had to decide whether the Claimant had voluntarily left her job without just cause.<sup>19</sup>

[22] The General Division decided that the Claimant made a personal decision to retire from her job and in doing so, she had voluntarily left her job on December 30, 2022.<sup>20</sup> It concluded that there was no just cause and that she had reasonable alternatives.<sup>21</sup>

[23] The General Division considered the Claimant's specific arguments about her circumstances.<sup>22</sup> Specifically, it considered whether there were significant changes to her work duties, workplace stress and intolerable working conditions.

[24] The General Division decided that there were no significant changes to her work duties.<sup>23</sup> It found that while she may have been overwhelmed and stressed when she quit her job, she had no supporting medical evidence to support that her job was endangering her health or that she needed to leave her job for health reasons.<sup>24</sup> It also decided that her working conditions were not manifestly intolerable, but that she made a personal decision to leave her job.<sup>25</sup>

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<sup>16</sup> See page AD1-3.

<sup>17</sup> See section 29(c) of the EI Act.

<sup>18</sup> See sections 29(c)(ix) and 29(c)(iv) of the EI Act.

<sup>19</sup> See section 29(c) of the EI Act.

<sup>20</sup> See paragraphs 2, 5, 17, 18 and 21 of the General Division decision.

<sup>21</sup> See paragraphs 22, 51, 60 and 74 of the General Division decision.

<sup>22</sup> See paragraph 34 of the General Division decision.

<sup>23</sup> See paragraphs 36 and 43 of the General Division decision.

<sup>24</sup> See paragraphs 53 and 55 of the General Division decision.

<sup>25</sup> See paragraphs 70 and 74 of the General Division decision.

[25] The General Division found that the Claimant had the following reasonable alternatives to leaving her job:<sup>26</sup>

- To speak with her employer when she was struggling with the technology and new procedures to ask for additional training and support.
- To speak with the employer if her workload was too heavy after the new hires and to ask for assistance.
- To ask the employer to transfer her to a different position.
- To continue working until she found suitable alternative employment elsewhere.
- To consult her doctor about the potential need for a leave of absence, or to quit her job for medical reasons.
- To speak with the employer and alert them to the level of stress was feeling and give the employer a chance to resolve her staffing and technology concerns.

[26] It is not arguable that the General Division made an important error of fact when it decided that the Claimant didn't have just cause to leave her job for the following reasons.

[27] The Claimant has not pointed to any particular error of fact that the General Division made. Instead, her arguments to the Appeal Division simply restate her disagreement with one of the reasonable alternatives. Namely, that she was unable to find a less stressful job because she was too busy performing her current job at the same time.

[28] The Claimant is re-arguing her case because she disagrees with the General Division's finding about the reasonable alternatives available to her.<sup>27</sup> However, the

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<sup>26</sup> See paragraphs 32, 33, 46, 47, 48, 58 of the General Division decision.

<sup>27</sup> See page AD1-3.

Appeal Division's mandate is limited to determining whether the General Division made a specific type of error.<sup>28</sup>

[29] An appeal to the Appeal Division is not a new hearing. I cannot reweigh the evidence to come to a conclusion more favourable for the Claimant.<sup>29</sup>

[30] There is no arguable case that the General Division made an error of fact about any of its key findings.<sup>30</sup> I reviewed the file and listened to the recording from the General Division hearing. The evidence supports the General Division's decision and findings. I did not find any key evidence that the General Division might have ignored or misinterpreted.<sup>31</sup>

## **Conclusion**

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

Solange Losier  
Member, Appeal Division

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<sup>28</sup> See section 58(1) of the DESD Act.

<sup>29</sup> See *Garvey v Canada (Attorney General)*, 2018 FCA 118.

<sup>30</sup> See section 58(1)(c) of the DESD Act.

<sup>31</sup> See *Karadeolian v Canada (Attorney General)*, 2016 FC 615, which recommends doing such a review.