



Citation: *EB v Canada Employment Insurance Commission*, 2023 SST 1207

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: E. B.
Representative: M. G.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated July 20, 2023
(GE-23-1458)

Tribunal member: Stephen Bergen

Decision date: **September 5, 2023**
File number: AD-23-760

Decision

[1] I am refusing leave (permission) to appeal. The appeal will not proceed.

Overview

[2] E. B. is the Applicant. I will call her the Claimant because she made a claim for Employment Insurance (EI) Benefits. The Respondent, the Canada Employment Insurance Commission (Commission) denied her claim. It said that she was disqualified because she voluntarily left her job without just cause. It also said that she was disentitled because she was not available for work.

[3] The Claimant asked the Commission to reconsider but it would not change its decision. Next, she appealed the reconsideration decision to the General Division of the Social Security Tribunal.

[4] The General Division agreed with the Claimant that she was available for work and allowed her appeal on this issue. This meant that she was not **disentitled** to benefits. However, the General Division dismissed the appeal of her **disqualification**. It agreed with the Commission that she had voluntarily left her job without just cause.

[5] The Claimant is asking the Appeal Division for leave to appeal the General Division's decision on the issue of her disqualification.

[6] I am refusing leave to appeal. There is no arguable case that the General Division made an important error of fact.

Issues

[7] Is there an arguable case that the General Division ignored or misunderstood evidence

- a) of how the Claimant was affected by increases in her living expenses?
- b) of the urgency and difficulty of her move to Saskatchewan?

I am not giving the Claimant permission to appeal

General Principles

[8] For the Claimant's application for leave to appeal to succeed, her reasons for appealing would have to fit within the "grounds of appeal." The grounds of appeal identify the kinds of errors that I can consider.

[9] I may consider only the following errors:

- a) The General Division hearing process was not fair in some way.
- b) The General Division did not decide an issue that it should have decided. Or, it decided something it did not have the power to decide (error of jurisdiction).
- c) The General Division based its decision on an important error of fact.
- d) The General Division made an error of law when making its decision.¹

[10] To grant this application for leave and permit the appeal process to move forward, I must find that there is a reasonable chance of success on one or more grounds of appeal. Other court decisions have equated a reasonable chance of success to an "arguable case."²

Important error of fact

[11] The Claimant argued that the General Division made an important error of fact.

[12] An "important error of fact" is where the General Division bases its decision on a finding of fact that ignores or misunderstands relevant evidence, or does not follow logically from the evidence.

[13] In this case, the General Division decision depends on its finding that the Claimant had a reasonable alternative to leaving. The Commission disqualifies claimants from receiving EI benefits if they voluntarily leave their employment without

¹ This is a plain language version of the grounds of appeal. The full text is in section 58(1) of the *Department of Employment and Social Development Act* (DESDA).

² See *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; and *Ingram v Canada (Attorney General)*, 2017 FC 259.

just cause.³ A claimant has just cause for leaving only when they have no reasonable alternative to leaving.⁴

[14] The General Division found that the Claimant could have applied for work in Saskatchewan before leaving her job in Nova Scotia.⁵ It said that she might have found a job, or obtained a reasonable assurance of one, before she quit the job she had.⁶

[15] The Claimant argues that the General Division had not fully understood her reasons for leaving her job. She agrees that she left her job because of mounting financial pressures from increased living expenses, but she now includes an outstanding tax debt among those pressures. In addition, she says her finances affected her health because she was stressed and forced to modify her diet to eat less healthy foods.

[16] The Claimant also argued that she did not get a job in Saskatchewan before moving from Nova Scotia, because she had to move in very little time. She explained that she had to take care of some personal matters. This included having to pack up the contents of her home on short notice, during what she describes as the chaotic “holiday season” in December.

[17] However, the Appeal Division can not consider evidence that was not before the General Division. I could not consider new evidence, even if thought that the General Division might have reached a different decision if it had that additional evidence.⁷

[18] I will not be considering the Claimant’s concerns about her additional tax obligation or how her strained finances may have affected her health through stress or a restricted diet. The General Division did not have this evidence. Likewise, I will not be

³ See section 30(1) of the *Employment Insurance Act* (EI Act).

⁴ See section 29(c) of the EI Act.

⁵ See para 37, and 39 of the General Division decision.

⁶ See para 33 of the General Division decision.

⁷ *El Haddadi v. Canada (Attorney General)*, 2016 FC 482; *Mette v. Canada (Attorney General)*, 2016 FCA 276.

considering the particular difficulties of her move that she raised in argument to the Appeal Division, or how these may have affected her ability to apply for work.

[19] There is no arguable case that the General Division made an important error of fact.

[20] The General Division recognized that the Claimant left her job because her living expenses had increased. It noted that she was struggling financially with the high cost of living. The Claimant does not dispute these facts.

[21] After reviewing the evidence, the General Division found as fact that the Claimant's circumstances did not create an urgency to move. Therefore, it found that the Claimant had a reasonable alternative to leaving her job. It found that she could have delayed her move until she obtained a job or a reasonable assurance of one. The Claimant has not identified how the General Division mishandled any evidence that may have challenged this finding.

[22] The Claimant may disagree with how the General Division weighed the evidence or with its conclusion, but I do not have the power to re-weigh or re-evaluate the evidence to reach a different conclusion.⁸

[23] I appreciate that the Claimant is unrepresented. She may not have understood precisely what she should argue. Therefore, I searched the record for other relevant evidence that the General Division may have ignored or misunderstood.⁹ Unfortunately for the Claimant, the record does not support an argument that the General Division made an important error of fact.

[24] The Claimant has no reasonable chance of success.

⁸See for example: *Hideq v Canada (Attorney General)*, 2017 FC 439, *Parchment v Canada (Attorney General)*, 2017 FC 354, *Johnson v Canada (Attorney General)*, 2016 FC 1254, *Marcia v Canada (Attorney General)*, 2016 FC 1367.

⁹ I am following the direction of the Federal Court in decision such as *Karadeolian v. Canada (Attorney General)*, 2016 FC 615.

Conclusion

[25] I am refusing permission to appeal. This means that the appeal will not proceed.

Stephen Bergen
Member, Appeal Division