



Citation: *SA v Canada Employment Insurance Commission*, 2023 SST 1241

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant: S. A.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated July 4, 2023
(GE-23-1205)

Tribunal member: Melanie Petrunia

Decision date: September 10, 2023

File number: AD-23-680

Decision

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

Overview

[2] The Applicant, S. A. (Claimant), quit his job as a dishwasher and applied for employment insurance (EI) regular benefits.

[3] The Respondent, the Canada Employment Insurance Commission (Commission) decided that the Claimant voluntarily left his job without just cause and could not be paid benefits.

[4] The Claimant appealed this decision to the Tribunal's General Division. The General Division dismissed the Claimant's appeal. It found that the Claimant did not have just cause to leave his job. It decided that the Claimant had reasonable alternatives to quitting his job when he did.

[5] The Claimant now wants to appeal the General Division decision to the Tribunal's Appeal Division. However, he needs permission for his appeal to move forward. He argues that the General Division made important errors of fact in its decision.

[6] I have to decide whether there is some reviewable error of the General Division on which the appeal might succeed. I am refusing leave to appeal because the Claimant's appeal has no reasonable chance of success.

Issue

[7] The issues are:

- a) Is there an arguable case that the General Division failed to consider relevant evidence?
- b) Does the Claimant raise any other reviewable errors of the General Division upon which the appeal might succeed?

I am not giving the Claimant permission to appeal

[8] The legal test that the Claimant needs to meet on an application for leave to appeal is a low one: Is there any arguable ground on which the appeal might succeed?¹

[9] To decide this question, I focused on whether the General Division could have made one or more of the relevant errors (or grounds of appeal) listed in the *Department of Employment and Social Development Act* (DESD Act).²

[10] An appeal is not a rehearing of the original claim. Instead, I must decide whether the General Division:

- a) failed to provide a fair process;
- b) failed to decide an issue that it should have, or decided an issue that it should not have;
- c) based its decision on an important factual error;³ or
- d) made an error in law.⁴

[11] Before the Claimant can move on to the next stage of the appeal, I have to be satisfied that there is a reasonable chance of success based on one or more of these grounds of appeal. A reasonable chance of success means that the Claimant could argue his case and possibly win. I should also be aware of other possible grounds of appeal not precisely identified by the Claimant.⁵

¹ This legal test is described in cases like *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12 and *Ingram v Canada (Attorney General)*, 2017 FC 259 at para 16.

² DESD Act, s 58(2).

³ The language of section 58(1)(c) actually says that the General Division will have erred if it bases its decision on a finding of fact that it makes in a perverse or capricious manner or without regard for the material before it. The Federal Court has defined perverse as “willfully going contrary to the evidence” and defined capricious as “marked or guided by caprice; given to changes of interest or attitude according to whim or fancies; not guided by steady judgment or intent” *Rahi v Canada (Minister of Citizenship and Immigration)* 2012 FC 319.

⁴ This paraphrases the grounds of appeal.

⁵ *Karadeolian v Canada (Attorney General)*, 2016 FC 615; *Joseph v Canada (Attorney General)*, 2017 FC 391.

There is no arguable case that the General Division erred

[12] In his application for leave to appeal, the Claimant argues that the General Division failed to acknowledge the challenges he faced finding work in his field as an immigrant. He says he was forced to accept as job as a dishwasher when he could not find work in his profession.⁶

[13] The Claimant argues that he was asked to perform duties outside of his job description which posed a challenge because he did not have the necessary expertise. He also says that the General Division did not take into consideration his employer's confrontational manner. He argues that his employer created a hostile work environment that negatively impacted his well-being and job satisfaction.⁷

[14] 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. The law provides a list of relevant circumstances, including antagonism with a supervisor and significant changes in work duties.⁸

[15] In its decision, the General Division considered the Claimant's argument that his supervisor spoke to him in a confrontational manner when he refused to take on duties that were outside of his job description.⁹ It found that this did not constitute antagonism from a supervisor sufficient to amount to just cause for the Claimant to voluntarily leave his job.¹⁰

[16] I find that there is no arguable case that the General Division failed to consider the employer's confrontational manner. The Claimant raised this argument at the General Division and it was taken into consideration in its decision.

[17] The General Division also considered the Claimant's argument that he was asked to perform duties outside of his job description.¹¹ The Claimant had been hired as

⁶ AD1-3

⁷ AD1-3

⁸ See section 29(c)(x) and (ix) of the EI Act.

⁹ General Division decision at para 27.

¹⁰ General Division decision at para 30.

¹¹ General Division decision at para 31.

a dishwasher in the dessert section and was asked to clean dishes in the meat section. The General Division found that this did not amount to a significant changes in work duties and he did not have just cause for leaving his job for this reason.¹²

[18] The General Division considered whether there were any other relevant circumstances. It acknowledged that the Claimant could not find work in his profession and had to accept the dishwashing job.¹³ It found that the fact that the Claimant could not find work consistent with his professional qualifications does not give rise to just cause for quitting his job.¹⁴

[19] There is no arguable case that the General Division failed to consider that the Claimant was unable to find work in his field of expertise, or that he was asked to perform duties outside of his job description. The General Division acknowledged these arguments in its decision.

[20] The General Division considered whether the Claimant had reasonable alternatives to quitting his job when he did. It found that there was no just cause because a reasonable alternative to leaving for the Claimant was to find another job before he quit.¹⁵

[21] The Claimant's arguments do not have a reasonable chance of success. The General Division acknowledged and considered the facts and arguments that the Claimant is raising in his application for leave to appeal. There is no arguable case that the General Division made an error of fact about any of its key findings. I have reviewed the file and examined the General Division decision.¹⁶ I did not find any evidence that it might have ignored or misinterpreted.

¹² General Division decision at para 32.

¹³ General Division decision at para 34.

¹⁴ General Division decision at para 36.

¹⁵ General Division decision at para 41.

¹⁶ 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.

[22] The General Division stated and applied the law correctly when it decided that the Claimant did not have just cause to leave his job. It did not agree with the Claimant and explained, with reference to the evidence, why it did not agree.

[23] I cannot reweigh the evidence in order to come to a different conclusion more favourable to the Claimant. The Appeal Division has a limited role, so I cannot intervene in order to reweigh the evidence about the application of settled legal principles to the facts of the case.¹⁷

[24] Aside from the Claimant's arguments, I have also considered the other grounds of appeal. The Claimant has not pointed to any procedural unfairness on the part of the General Division and I see no evidence of procedural unfairness. There is no arguable case that the General Division made an error of jurisdiction or an error of law.

[25] The Claimant has not identified any errors of the General Division upon which the appeal might succeed. As a result, I am refusing leave to appeal.

Conclusion

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

Melanie Petrunia
Member, Appeal Division

¹⁷ See *Garvey v Canada (Attorney General)*, 2018 FCA 118.