



Citation: *MR v Canada Employment Insurance Commission*, 2023 SST 149

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: M. R.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated July 12, 2023
(GE-22-3703)

Tribunal member: Janet Lew

Decision date: September 20, 2023

File number: AD-23-751

Decision

[1] Leave (permission) to appeal is refused. The appeal will not be going ahead.

Overview

[2] The Applicant, M. R. (Claimant), is seeking leave (permission) to appeal the General Division decision. The General Division found that the Claimant had not shown just cause for leaving his job when he did. The General Division found that the Claimant had reasonable alternatives to leaving. This meant that the Claimant was disqualified from receiving Employment Insurance benefits.

[3] The Claimant denies that he had any reasonable alternatives to leaving his job. He argues that the General Division made factual errors. He argues, for instance, that the General Division failed to recognize that there were major changes in the terms and conditions of his employment. Because of those changes, he says he was unable to stay at his job and had to leave.

[4] Before the Claimant can move ahead with his appeal, I have to decide whether the appeal has a reasonable chance of success. In other words, there has to be an arguable case.¹ If the appeal does not have a reasonable chance of success, this ends the matter.²

[5] I am not satisfied that the appeal has a reasonable chance of success. Therefore, I am not giving permission to the Claimant to move ahead with his appeal.

Issue

[6] Is there an arguable case that the General Division made any factual errors about whether the Claimant had any reasonable alternatives to leaving his job?

¹ *Fancy v Canada (Attorney General)*, 2010 FCA 63.

² Under section 58(2) of the *Department of Employment and Social Development (DESD) Act*, I am required to refuse permission if I am satisfied "that the appeal has no reasonable chance of success."

I am not giving the Claimant permission to appeal

[7] The Appeal Division must grant permission to appeal unless the appeal has no reasonable chance of success. A reasonable chance of success exists if there is a possible jurisdictional, procedural, legal, or a certain type of factual error.³

[8] For factual errors, the General Division had to have based its decision on an error that it made in a perverse or capricious manner, or without regard for the evidence before it.

Is there an arguable case that the General Division made any factual errors about whether the Claimant had any reasonable alternatives to leaving his job?

[9] The Claimant argues the General Division made important mistakes about the facts.

[10] For one, the Claimant says that the General Division was wrong when it found that a reasonable alternative was for him to disclose his vaccine status. The Claimant says this is incorrect as that would not have been enough to be able to return to work. He says his employer also required proof of vaccination.

[11] In fact, the Claimant is referring to the arguments of the Respondent, the Canada Employment Insurance Commission (Commission). The General Division wrote, “the Commission says that a reasonable alternative to leaving would have been for the Appellant to declare his vaccination status and return to work.”⁴ This did not represent the General Division’s specific findings.

[12] The General Division found that one of the alternatives the Claimant had was to “comply with the policy and resume his employment.”⁵ The General Division did not fully set out what the policy was. It stated that “Among other things, the policy required the [Claimant] to attest as to his vaccination status.”⁶ It is clear from this that the General

³ See section 58(1) of the DESD Act.

⁴ General Division decision, at paras 7 and 20.

⁵ General Division decision, at para 24.

⁶ General Division decision, at para 3.

Division recognized that the employer's vaccination policy had other requirements. So, I cannot find that there is an arguable case that the General Division necessarily made a factual error.

[13] Two, the Claimant argues that the General Division made a contradictory finding when it said that "neither party has no [sic] jurisdiction of efficacy of vaccination" and then, at the same time, say that he had a reasonable alternative by complying with the vaccination policy.

[14] From this, I understand that the Claimant is saying that the General Division respected that the Claimant had a right to decline vaccination because of his personal beliefs. That being the case, then he says that vaccination was not a reasonable alternative.

[15] The Claimant disagreed with his employer's vaccination policy. He found it too intrusive, unfair, unreasonable, and unnecessary. While he did not have any religious or medical exemptions, the policy was unreasonable because he worked outdoors. He believed that COVID-19 did not present a health or safety issue. If the policy was about health and safety, he noted that his employer allowed some unvaccinated employees to continue working. The Claimant also found the policy created workplace division.⁷

[16] Even if the Claimant's beliefs made vaccination an unreasonable alternative, it is clear from the General Division that it determined that there were other reasonable alternatives. The General Division mentioned that it was simply listing an alternative.

[17] In other words, there were other alternatives. But the General Division did not list the most obvious one: the Claimant could have remained employed while looking for and securing other work before leaving his job.

[18] In other words, even if the General Division made an error in concluding that vaccination was a reasonable alternative, that did not undermine its overall conclusion

⁷ Supplementary Record of Claim, dated March 4, 2022, at GD 3-35, and Supplementary Record of Claim, dated September 28, 2022, at GD 3-43.

that there were other alternatives open to the Claimant. For this reason, I am not satisfied that there is an arguable case on this point.

[19] Finally, the Claimant says the General Division failed to recognize that there were major changes in his employment that forced him to leave his job. The evidence does not support this claim that changes to his job were the reason he quit.

[20] The employer suspended the Claimant. Once off work, the Claimant could have continued to remain off work. Indeed, the Claimant remained on a leave of absence for several months, from November 2, 2021, to about March 2022. He remained employed for about four months. His status was not changing. He could have remained on suspension indefinitely looking for other work.

[21] What prompted the Claimant to leave his job was because he was facing financial hardship. He could no longer financially sustain himself and his family. The General Division found that he had to quit his job so he could access his pension.

[22] I am not satisfied that the Claimant has an arguable case that the General Division failed to recognize that major changes in his job forced him to quit. It is clear from the evidence that financial considerations caused the Claimant to leave his job.

[23] As a footnote, it was implicit in the General Division's decision that the Claimant's financial reasons did not represent just cause. This is consistent with established case law that just cause does not include financial considerations.

[24] In a case called *Campeau*,⁸ the Federal Court of Appeal held that "sincerity and inadequate income do not constitute just cause ... allowing [that claimant] to leave her employment in making the Employment Insurance system bear the cost of supporting her."⁹

⁸*Canada (Attorney General) v Campeau*, 2006 FCA 376.

⁹ *Campeau*, at para 21.

[25] The Court of Appeal has reaffirmed these principles several times: in *Richard*,¹⁰ *Murugaiah*,¹¹ *Lapointe*,¹² and *Graham*,¹³ to cite some examples. Mr. Richard left his employment for a seasonal job in another field where he could improve his financial situation. The Court of Appeal wrote:

[13] The Board of Referees erred when it accepted a worker's desire to improve his or her financial situation as just cause for voluntarily leaving an employment.

[14] Case law is nonetheless clear on this issue, and the [Commission] has complained that it was not followed. How many times does it have to be repeated before umpires understand and the Chief Umpire ensures that they have understood? However noble and legitimate the desire to improve one's lot may be, this desire is not, for the purposes of sections 29 and 30 of the [Employment Insurance] Act, a legal justification for voluntarily leaving one's employment.

[Emphasis added.]

[26] Mr. Murugaiah left two jobs to move to another city to look for work suitable to his recent training. Ms. Lapointe left her employment to significantly improve her working conditions in a region where permanent jobs were few and far between. Similarly, Mr. Graham left his part-time employment after the school term was over. He returned home to look for full-time summer employment and save on living expenses.

[27] In each case, the claimants left their employment for more favourable economic conditions. The Federal Court of Appeal held that a claimant's desire to improve their financial situation may constitute good cause, but it does not constitute just cause.¹⁴

¹⁰ *Canada (Attorney General) v Richard*, 2009 FCA 122.

¹¹ *Canada (Attorney General) v Murugaiah*, 2008 FCA 10.

¹² *Canada (Attorney General) v Lapointe*, 2009 FCA 147.

¹³ *Canada (Attorney General) v Graham*, 2011 FCA 311 at para 7.

¹⁴ *Graham*, at para 7.

Conclusion

[28] I am not satisfied that the appeal has a reasonable chance of success.

Permission to appeal is refused. This means that the appeal will not be going ahead.

Janet Lew
Member, Appeal Division