Citation: *DO v Canada Employment Insurance Commission*, 2023 SST 1349

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	D. O.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated April 5, 2023 (GE-22-3778)

Tribunal member:	Solange Losier
Decision date:	October 6, 2023
File number:	AD-23-415

Decision

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

Overview

[2] D. O. is the Claimant in this case. He worked as a purchasing coordinator. He quit his job and applied for Employment Insurance (EI) benefits. He says that there was a long commute between work and home, as well as a toxic environment at work.

[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] There were reasonable alternatives.

[4] The General Division agreed with the Commission.[2] It considered the Claimant's reasons for leaving his job, but decided he didn't have just cause. It said there were other 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 made an error of law and didn't follow procedural fairness.[4] He argues that he had just cause to leave his job due to harassment, toxic and discriminatory working conditions.

[6] I am denying the Claimant's request for permission to appeal because it has no reasonable chance of success.[5]

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[1] See section 30(1) of the *Employment Insurance Act* (EI Act) says you are disqualified from receiving EI benefits if you voluntarily leave your job without just cause and reconsideration decision at GD3-52.
[2] See General Division decision at pages AD1A-1 to AD1A-9.
[3] See application to the Appeal Division at AD1-1 to AD1-44.
[4] See page AD1-2.
[5] See section 58(2) of the *Department of Employment and Social Development* (DESD Act).

Issues

[7] I have focused on the following questions:

a) Is there an arguable case that the General Division made an error of law when it decided that the Claimant didn't have just cause to leave his job?

b) Is there an arguable case that the General Division didn't follow procedural fairness?

c) Is there an arguable case that the General Division made an important error of fact?

Analysis

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

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

[10] 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").[9]

- proceeded in a way that was unfair
- acted beyond its powers or refused to exercise those powers
- made an error in law
- based its decision on an important error of fact

[11] 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.

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[6] See section 56(1) *Department of Employment and Social Development Act* (DESD Act).
[7] See section 58(2) of the DESD Act.
[8] See *Osaj v Canada (Attorney General),* 2016 FC 115, see paragraph 12.
[9] See section 58(1) of the DESD Act.

I am not giving the Claimant permission to appeal

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

[12] 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.[10]

[13] In the Claimant's application to the Appeal Division, he doesn't point to a specific error of law that the General Division made. His arguments focus on the reasons he left his job and restates that he had just cause. He also says that each situation is unique, so the availability and feasibility of alternative options varies. Lastly, he says that he made sincere efforts to resolve workplace conflicts before making any drastic decisions.

[14] The General Division had to decide whether the Claimant voluntarily left his job without just cause.[11]

[15] 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.[12]

[16] The General Division said that the Claimant agreed he voluntarily left his job on October 7, 2021.[13]

[17] The General Division then looked at the reasons the Claimant said he left his job. It said that he left his job because of the long commute and his perception of a toxic work environment.[14]

[18] However, the General Division was not persuaded that the Claimant actually quit his job because of a toxic work environment.[15] It decided that the evidence did not support the existence of a toxic work environment.[16]

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[10] See section 58(1)(b) of the DESD Act.
[11] See section 29(c) of the EI Act.
[12] See section 29(c) of the EI Act.
[13] See paragraph 9 of the General Division decision.
[14] See paragraphs 16 and 17 of the General Division decision.
[15] See paragraphs 16, 17, 18, 19 and 25 of the General Division decision.
[16] See paragraph 25 of the General Division decision.

[19] The General Division found that he only raised the issue of a toxic work environment after he was already refused EI benefits. In its decision, it explained why it preferred some of the earlier evidence provided by the Claimant over statements that came later.[17] It also relied on a Federal Court of Appeal (Court) case to support its position of favouring the earlier evidence.[18]

[20] Finally, the General Division decided that the Claimant did not have just cause to leave his job based on the reasons he provided.[19] It said there were two reasonable alternatives, including attempting to resolve the workplace conflict and staying in his job until he could secure a new job.[20]

[21] It is not arguable that the General Division made an error of law for the following reasons.

[22] First, the General Division stated and applied the law correctly when it decided that the Claimant did not have just cause to leave his job.[21] It considered his reasons for leaving his job, but determined that he didn't have just cause as there were reasonable two reasonable alternatives.

[23] The General Division relied on relevant case law in its decision.[22] The Court says that there is an obligation on employees to try to resolve workplace conflicts with an employer, or to demonstrate efforts to seek alternative employment before taking a unilateral decision to quit a job.[23]

[24] Second, the Claimant's arguments to the Appeal Division simply restate the reasons he had just cause and his disagreement with the outcome. However, an appeal

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[17] See paragraph 19 of the General Division decision.
[18] See paragraphs 17, 18 and 19 of the General Division decision and *Cundle v Canada (Human Resources Development),* 2007 FCA 364.
[19] See paragraphs 31 and 35 of the General Division decision.
[20] See paragraphs 33, 24, and 36 of the General Division decision.
[21] See paragraphs 11-13 of the General Division decision.
[22] See paragraph 32 of the General Division decision.
[23] See *Canada (Attorney General) v White*, 2011 FCA 190, at paragraph 5 and *Canada (Attorney General) v Canada,* 2011 FCA 331, at paragraph 6.

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.[24]

[25] Third, even though the Claimant argues that he had a good reason to leave his job, the General Division correctly determined that having a "good reason or good cause" did not amount to just cause. The Court has already said that having a good reason to leave a job does not amount to just cause according to the EI Act.[25]

[26] There is no arguable case that the General Division made an error of law when it decided that the Claimant voluntarily left his job without just cause.[26] There is no reasonable chance of success on this ground.

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

[27] If the General Division failed to follow a fair process, then I can intervene.[27] For example, if the decision maker was biased or did something that might have compromised the Claimant's ability to know or respond to the case against him.

[28] The Claimant doesn't explain how the General Division breached procedural fairness or failed to follow a fair process in his application to the Appeal Division. Even so, I reviewed the record, the General Division decision and listened to the audio recording of the hearing to see if there were procedural fairness errors.

[29] The hearing recording shows that the General Division explained the legal test for voluntary leave cases to the Claimant. It asked him how he wanted the hearing to proceed. It asked him whether he wanted to present his case first or be asked questions. The General Division asked him relevant questions and clarifying questions about the evidence throughout the hearing.

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[24] See G*arvey* v *Canada (Attorney General)*, 2018 FCA 118.
[25] See paragraphs 11, 31 and 35 of the General Division decision and *Canada (Attorney General) v Imran*, 2008 FCA 17, at paragraph 5.
[26] See section 58(1)(b) of the DESD Act.
[27] See section 58(1)(a) of the DESD Act.

[30] I did not find any errors made by the General Division on this ground.

[31] So, there is no arguable case that the General Division was procedurally unfair because the Claimant was given a full and fair opportunity to provide his evidence and make his arguments.[28] There is no reasonable chance of success on this ground.

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

[32] 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".[29]

[33] This means that I can intervene if the General Division based its decision on an important mistake about the facts of the case.

[34] However, not all errors of fact will allow me to 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.

[35] This involves considering some of the following questions:[30]

- 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?

[36] Some of the Claimant's arguments in his application to the Appeal Division say that the General Division made some errors with the specific facts of this case. Because

[28] See section 58(1)(a) of the DESD Act.
[29] See section 58(1)(c) of the DESD Act.
[30] This is a summary of the Federal Court of Appeal's decision in *Walls v Canada (Attorney General)*, 2022 FCA 47 at paragraph 41.

of that, I have considered whether the General Division could have made an important error of fact.[31]

[37] The Claimant points to paragraph 35 of the General Division decision for two reasons.[32] He says that it contradicts what he told the General Division at the hearing. He also says that the General Division ignored crucial information.

[38] More specifically, the Claimant argues that he told the General Division that he worked at the same location but for a different employer over a decade ago. At that time, he lived close to the workplace and it only took him 5-10 minutes to commute. As well, his daily commute time was a gruelling 2.5 hours each way, which the General Division ignored.

[39] I have reproduced paragraph 35 of the General Division decision and it says:

> With respect to quitting because the commute was too much for the Appellant, that does not amount to just cause. He testified that it was not rational to leave a good job. But he couldn't stay with the commuting time involved. He was 51 and can't do now what he could do at age 21. That may be a good cause for quitting for the Appellant. But it is not just cause for EI purposes. Just cause requires that there is no reasonable alternative in all the circumstances to quitting when the person quits. The Appellant had worked for this employer in the past. He had the same commuting distance as in the past. He knew in advance what the commute would require. At the time he quit, he had worked for the employer for about two and one-half months. The failure to find a ride to work with a co-worker by itself was not just cause. Other options needed to be explored to justify a conclusion that there was no reasonable alternative to quitting when he did.

[40] It is not arguable that the General Division made an important error of fact for the following reasons.

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[31] See section 58(1)(c) of the DESD Act.
[32] See pages AD1-28 to AD1-29.

[41] First, the General Division was aware of the Claimant's daily commute and did not ignore this fact. The decision reflects the specific details about when the Claimant left home in the morning and when he returned at night.[33]

[42] Having a long daily commute doesn't automatically mean that he had just cause to leave his job. The Claimant still had the burden proving that there was no reasonable alternative to leaving job when he did. In this case, the General Division said that there were two reasonable alternatives available to him, despite his daily commute.

[43] Second, the General Division was aware that the Claimant had worked at the same location in the past. The Claimant told the General Division that he previously worked at the same location many years ago and his commute was around 6 minutes because he lived nearby.[34]

[44] In my view, it is not arguable that the General Division made an important error of fact when it wrote "*he had the same commuting distance as in the past*" in paragraph 35 of its decision.

[45] I listened to the hearing recording. The General Division asked him specifically if the commuting time *changed* from when he started his job July 2021 to October 2021.[35] The Claimant confirmed that the commuting time did not change from when he first started his job in July 2021. This followed by the General Division asking him why he needed to quit if the commute hadn't changed from when he started.

[46] The General Division didn't misunderstand the facts or ignore crucial information. It knew that the Claimant had to commute to work and that it took over two hours. It also knew that he previously had a short commute when he worked at the same location many years ago. Given that, the General Division properly identified in its decision that he had the same commuting distance in the "past" – which I understand is the same

[33] See paragraph 21 of the General Division decision.
[34] See hearing recording at 41:35 to 41:53.
[35] See hearing recording at 41:21 to 43:24.

commute to work from when he started his job. In other words, the Claimant's commute didn't change when he started the job in July 2021 and when he quit in October 2021.

[47] It is not arguable that the General Division made an important error of fact.[36] The General Division's key findings are consistent with the evidence in the file. I am satisfied that the General Division did not ignore or misconstrue any of the evidence before it. There is no reasonable chance of success on this ground.

Conclusion

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

Solange Losier
Member, Appeal Division

[36] See section 58(1)(c) of the DESD Act.