



Citation: *DK v Canada Employment Insurance Commission*, 2023 SST 1405

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: D. K.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated July 12, 2023
(GE-22-4123)

Tribunal member: Pierre Lafontaine

Decision date: October 25, 2023

File number: AD-23-768

Decision

[1] Leave to appeal is refused. This means the appeal will not proceed.

Overview

[2] The Applicant (Claimant) left her job and applied for Employment Insurance (EI) benefits. The Respondent (Commission) looked at her reasons for leaving. It decided that she voluntarily left (or chose to quit) her job without just cause, so it couldn't pay her benefits. Upon reconsideration, the Commission maintained its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[3] The General Division found that the Claimant voluntarily left her job. It found that the Claimant could have attempted to use public transit. She could also have asked for new possibilities of treatment from her doctor that do not involve medication. It concluded that the Claimant did not have just cause to leave her job when she did.

[4] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. She submits her employer forced her to quit by forcing working conditions that are detrimental to her mental and physical health. She submits that she was only given 30 days to find work. She was looking for work frantically. The Claimant submits that the Commission cannot force her to get medicated for something she has managed for decades.

[5] I must decide whether there is some reviewable error of the General Division upon which the appeal might succeed.

[6] I am refusing leave to appeal because the Claimant's appeal has no reasonable chance of success.

Issue

[7] Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

Analysis

[8] Section 58(1) of the *Department of Employment and Social Development Act* specifies the only grounds of appeal of a General Division decision. These reviewable errors are that:

1. The General Division hearing process was not fair in some way.
2. 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.
3. The General Division based its decision on an important error of fact.
4. The General Division made an error of law when making its decision.

[9] An application for leave to appeal is a preliminary step to a hearing on the merits. It is an initial hurdle for the Claimant to meet, but it is lower than the one that must be met on the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove her case but must establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, that there is arguably some reviewable error upon which the appeal might succeed.

[10] Therefore, before I can grant leave, I need to be satisfied that the reasons for appeal fall within any of the above-mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success.

Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

[11] The Claimant submits that her employer forced her to quit by forcing working conditions that are detrimental to her mental and physical health. She submits that she was only given 30 days to find work. She was looking for work frantically. The Claimant submits that the Commission cannot force her to get medicated for something she has managed for decades.

[12] The General Division had to determine whether the Claimant had just cause to voluntarily leave her employment. This must be determined at the time she left.

[13] Whether one had just cause to voluntarily leave an employment depends on whether they had no reasonable alternative to leaving having regard to all the circumstances.

[14] The General Division found that the Claimant voluntarily left her job. It found that the Claimant had been driving to the current office location for the past seven years, but she could not handle the move to a further location. The General Division found that the Claimant could have attempted to use public transit or asked for new possibilities of treatment from her doctor that did not involve medication. It concluded that the Claimant did not have just cause to leave her job when she did.

[15] The evidence supports the General Division's conclusion that the Claimant had reasonable alternatives to leaving her job when she did. She could have tried public transit, a 40-minute one-way bus ride. She could have accepted the employer's offer to carpool or to drive her to and back from work. The Claimant made the personal decision not to accept these reasonable alternatives of transportation that would have given her time to find another job closer to her home.

[16] The evidence does not support a conclusion that the Claimant was forced to resign. The employer tried to keep her employed by offering her transportation alternatives to the new work location, but she refused them. The medical evidence filed by the Claimant does not support a conclusion that she could not use these alternative means of transportation.

[17] Furthermore, a long line of authority has established that transportation problems do not constitute just cause for leaving a job.¹

¹ *C. B. v Canada Employment Insurance Commission*, 2017 CanLII 91800 (SST), CUBs 16658A, 26708, 40246, 58249A, 64665 and 72413.

[18] As concluded by the General Division, the Claimant did not show that she had explored all reasonable alternatives to leaving her job when she did.

[19] In her leave to appeal application, the Claimant would essentially like to re-present her case. Unfortunately, for the Claimant, an appeal to the Appeal Division is not a new hearing where a party can re-present their evidence and hope for a new, favourable outcome.

[20] In her application for leave to appeal, the Claimant has not identified any reviewable errors such as jurisdiction or any failure by the General Division to observe a principle of natural justice. She has not identified errors in law nor identified any erroneous findings of fact, which the General Division may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision.

[21] For the above-mentioned reasons and after reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Claimant in support of her request for leave to appeal, I find that the appeal has no reasonable chance of success.

Conclusion

[22] Leave to appeal is refused. This means the appeal will not proceed.

Pierre Lafontaine
Member, Appeal Division