



Citation: *WD v Canada Employment Insurance Commission*, 2023 SST 1474

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: W. D.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated September 6, 2023
(GE-23-1968)

Tribunal member: Stephen Bergen

Decision date: **November 8, 2023**

File number: AD-23-847

Decision

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

Overview

[2] W. D. is the Applicant. He made a claim for Employment Insurance (EI) benefits, so I will call him the Claimant. The Respondent, the Canada Employment Insurance Commission (Commission), told the Claimant he was disqualified because he left his job without just cause. It also said he was not entitled to benefits, because he went to school for retraining after he quit his job. The Commission said that this meant he was not available for work.

[3] The Claimant disagreed with the Commission's decision and asked it to reconsider. The Commission would not change its decision, so the Claimant appealed to the General Division of the Social Security Tribunal. The General Division confirmed the Commission's decision to disqualify the Claimant. It agreed that he was available for work after July 1, 2023, after he left school. However, this did not help the Claimant. He could not receive benefits because he remained disqualified.

[4] The Claimant is asking for leave to appeal the General Division decision to the Appeal Division.

[5] I am refusing to grant the Claimant leave. He has not made out an arguable case that the General Division made an error.

Issues

[6] Did the General Division make an error of law by failing to consider "all the circumstances"?

[7] Did the General Division make an important error of fact by ignoring or misunderstanding evidence of dangerous working conditions?

Analysis

General Principles

[8] For the Claimant's application for leave to appeal to succeed, his reasons for appealing would have to fit within the "grounds of appeal." 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.

[9] The grounds of appeal identify the kinds of errors that I can consider. 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] The Courts have equated a reasonable chance of success to an "arguable case."²

[11] The Claimant did not select any of the grounds of appeal when he completed the Application to the Appeal Division. However, he added a note that he left because of working conditions that endangered his health.

[12] I wrote the Claimant on October 12, 2023. I explained the errors that I can consider, and I asked him again to explain how the General Division made an error. I gave him until October 26, 2023, to respond, but he did not respond.

[13] I can only assume that the Claimant is arguing that the General Division made an error by not considering a circumstance that influenced his decision to leave (dangerous

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.

working conditions), or by ignoring or misunderstanding evidence supporting the existence of this circumstance.

Error of law

[14] The *Employment Insurance Act* (EI Act) says that a claimant is disqualified from receiving benefits if they voluntarily leave their job without just cause.³ It says that a claimant has “just cause” for leaving where they can demonstrate that they had no reasonable alternative to leaving, considering all the circumstances.⁴ The EI Act lists some circumstances worthy of consideration. They include “working conditions that constitute a danger to health or safety.”⁵

[15] The General Division did not make an error of law by failing to consider all the circumstances. The General Division had no reason to consider whether his working conditions were dangerous because the Claimant never raised it as an issue.

[16] The Claimant was clear that he left his job so that he could go to school. When questioned by the General Division member as to whether there was any other reason he left, he noted that he had been transferred from a water technician position to a more general labourer position some time earlier and stated that his employer would not give him a chance to advance.

[17] Nothing in the evidence before the General Division, including the Claimant’s testimony, suggested that the Claimant left his job because of working conditions that constituted a danger to health or safety.

³ See section 30(1) of the EI Act.

⁴ See section 29(c) of the EI Act.

⁵ See section 29(c)(iv) of the EI Act.

Important error of fact

– Regarding dangerous working conditions

[18] An important error of fact is where the General Division bases its decision on a mistaken finding that ignored or misunderstood relevant evidence, or a finding that does not follow from the evidence.⁶

[19] There is no arguable case that the General Division made an important error of fact by ignoring evidence of dangerous working conditions.

[20] The Claimant did not tell either the Commission or the General Division about any dangerous working conditions in his former employment, and there is no other evidence of dangerous working conditions on the appeal record. The Claimant's Application to the Appeal Division form is the first place the Claimant mentioned anything about this.

– Other possible errors of fact

[21] I appreciate that the Claimant is unrepresented. He may not have understood precisely what he should argue. Therefore, I searched the record for relevant evidence that the General Division may have ignored or misunderstood.⁷

[22] The record does not support an argument that the General Division made an important error of fact. The General Division considered the circumstances suggested by the evidence and did not ignore or misunderstand any evidence related to those circumstances.

[23] The Claimant's appeal has no reasonable chance of success.

⁶ This is a paraphrase. More precisely, section 58(1)(c) of the DESDA states that the General Division makes a (reviewable) error of fact when it has "based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it."

⁷ I am following the direction of the Federal Court in decision such as *Karadeolian v. Canada (Attorney General)*, 2016 FC 615.

Conclusion

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

Stephen Bergen
Member, Appeal Division