



[TRANSLATION]

Citation: *DC v Canada Employment Insurance Commission*, 2024 SST 125

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: D. C.
Representative: Sylvain Bergeron

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated
November 6, 2023 (GE-23-2255)

Tribunal member: Pierre Lafontaine

Decision date: February 12, 2024
File number: AD-23-1066

Decision

[1] Permission to appeal is refused. 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 the Claimant's reasons for leaving. It decided that she voluntarily left (or chose to quit) her job without just cause, so it was not able to pay her benefits.

[3] The Claimant asked the Commission to reconsider, but it upheld its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[4] The General Division found that the Claimant chose to leave her job after a meeting with her supervisor and the human resources (HR) representative. The Claimant disagreed with the wording of a question on her evaluation, feeling that it violated the *Charter of Human Rights* (Charter). The General Division found that the Claimant had reasonable alternatives to leaving her job. She could have waited to see if her employer had another solution for her before leaving.

[5] The Claimant seeks permission from the Appeal Division to appeal the General Division decision. The Claimant argues that the General Division made an error of jurisdiction and an error of law.

[6] I am refusing permission to appeal because the Claimant has not raised a ground of appeal based on which the appeal has a reasonable chance of success.

Issue

[7] Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

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 the following:

1. The General Division hearing process was not fair in some way.
2. The General Division did not decide an issue 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 permission 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 at the hearing of the appeal on the merits. At the permission to appeal stage, the Claimant does not have to prove her case; she must instead establish that the appeal has a reasonable chance of success. In other words, she has to show that there is arguably a reviewable error based on which the appeal might succeed.

[10] I will give permission to appeal if I am satisfied that at least one of the Claimant's stated grounds of appeal gives the appeal a reasonable chance of success.

Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

[11] The Claimant argues that the General Division did not consider the combined effect of her reasons for leaving. She also argues that the General Division did not address the question on the employee assessment, which, in her opinion, is contrary to the Charter.

[12] The issue before the General Division was whether the Claimant voluntarily left her job without just cause within the meaning of the *Employment Insurance Act*.¹ This needs to be determined based on the circumstances that existed when the Claimant quit.

[13] The General Division found that the Claimant chose to leave her job because the employee evaluation form prepared by the head of HR had a question about diversity that the Claimant did not want to answer. The general manager held a meeting with the parties to discuss the situation. The Claimant acknowledged that she decided to quit her job after that meeting about the question on the form.²

[14] At that same meeting, the Claimant admitted feeling no animosity toward the HR representative concerning pay equity.³

[15] It is clear from the evidence that the Claimant left her job because of the question on the evaluation form, which she considered inappropriate or unacceptable.

[16] Even if I were to find that the General Division should have addressed the Charter and that the question on the form was contrary to the Charter, the Claimant had to explore other reasonable options before leaving her job.

[17] The General Division found that the Claimant had reasonable alternatives to leaving her job. It found that she could have waited for her supervisor's decision after their meeting on March 8, 2023. The General Division found that the employer was looking for a solution to the problem. It could have excused the Claimant from answering the question at issue.⁴

[18] The general manager told the Commission that the Claimant could have changed offices or worked from home and that the two employees could have limited their

¹ As per sections 29 and 30 of the *Employment Insurance Act*.

² See GD3-24.

³ See GD3-25.

⁴ See GD3-26.

interactions, since they were not doing the same job. The Claimant also could have looked for another, more suitable job.

[19] The Claimant's situation was not so unbearable as to support her leaving right away instead of waiting for her employer's decision. She even gave her employer one week's notice.

[20] The General Division found that the Claimant did not have just cause for leaving her job when she did.

[21] In my view, the General Division correctly stated the legal test for voluntary leaving. It applied this test to the facts of the case and looked at whether, after considering all of the circumstances, the Claimant had no reasonable alternative to leaving her job.

[22] The Claimant clearly disagreed with the question on the form and certainly had a strained relationship with the HR representative. However, the Claimant had reasonable alternatives to leaving her job when she did.

[23] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for permission to appeal, I have no choice but to find that the appeal has no reasonable chance of success.

Conclusion

[24] Permission to appeal is refused. The appeal will not proceed.

Pierre Lafontaine
Member, Appeal Division