



[TRANSLATION]

Citation: *AT v Canada Employment Insurance Commission*, 2024 SST 146

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

<b>Applicant:</b>	A. T.
<b>Respondent:</b>	Canada Employment Insurance Commission
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<b>Decision under appeal:</b>	General Division decision dated December 1, 2023(GE-23-2159)
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<b>Tribunal member:</b>	Pierre Lafontaine
<b>Decision date:</b>	February 16, 2024
<b>File number:</b>	AD-24-24

## Decision

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

## Overview

[2] The Applicant (Claimant) worked at X and left on December 12, 2020. On January 20, 2021, he told the Respondent (Commission) that he had left that job for another job at X that was supposed to start on January 19, 2021. Then, on October 14, 2021, the Claimant told the Commission that he had left his job on December 12, 2020, to go work for X and X. He said this job started on January 5, 2021.

[3] On October 19, 2021, the Commission decided that the Claimant voluntarily left his job without just cause. It disqualified the Claimant from receiving benefits from December 6, 2020. This created an overpayment.

[4] The Claimant asked for a reconsideration on March 17, 2022. He argued that he already had a job with X and X when he left his job with X. On April 22, 2022, the Commission upheld its initial decision about voluntary leaving.

[5] The Claimant filed a second reconsideration request on June 9, 2023. In its July 13, 2023, decision, the Commission said that it would not reconsider its decision because more than 30 days had passed since the April 22, 2022, decision and there was no explanation for the delay. On August 6, 2023, the Claimant appealed the Commission's reconsideration decision to the Tribunal's General Division.

[6] The General Division found that it had no choice but to apply the law, which says that the General Division may allow up to one year to appeal after the April 22, 2022, reconsideration decision was communicated.<sup>1</sup> The appeal was not heard.

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<sup>1</sup> See section 52(2) of the *Department of Employment and Social Development Act* (DESD Act).

[7] The Claimant now seeks permission from the Appeal Division to appeal the General Division decision. He argues that the General Division did not consider that he left his job at X because he already had assurance of another job at X.

[8] I have to decide whether there is an arguable case that the General Division made a reviewable error based on which the appeal has a reasonable chance of success.

[9] 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**

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

## **Analysis**

[11] 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.

[12] 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 his case; he must instead establish that the

appeal has a reasonable chance of success. In other words, he must show that there is arguably a reviewable error based on which the appeal might succeed.

[13] 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?**

[14] The Claimant says that the General Division did not consider that he left his job at X because he already had assurance of another job at X before leaving.

[15] In support of his appeal to the General Division, the Claimant filed his earnings as evidence to show that he had left X for another job in January 2021.

[16] The issue before the General Division involved an indefinite disqualification that was imposed on the Claimant under sections 29 and 30 of the *Employment Insurance Act* because he voluntarily left his job without just cause.

[17] The decision in this case was made on reconsideration by the Commission on April 22, 2022. The reconsideration decision states that the Claimant has 30 days after receiving the decision to appeal to the Tribunal.

[18] At the hearing, the Claimant confirmed that he had received the reconsideration decision in question. He did not challenge this decision before the Tribunal because he felt he was not ready. He needed to talk to people and gather his evidence.

[19] The General Division found that the Claimant had received the Commission's reconsideration decision on or around May 2, 2022. It found that the Claimant did not appeal the reconsideration decision to the General Division until August 6, 2023.

[20] The General Division found that it had no choice but to apply the law, which says that the General Division may allow up to one year to appeal after the reconsideration decision is communicated.<sup>2</sup> The appeal was not heard.

[21] The evidence shows that the Claimant received the Commission's reconsideration decision in May 2022. He did not file his notice of appeal until August 6, 2023, which was 14 months later.

[22] This means that more than one year passed between the time the Commission's reconsideration decision was communicated to the Claimant and the time the Claimant duly appealed it to the General Division.

[23] I sympathize with the Claimant. But the law clearly states that the General Division cannot extend the time to appeal beyond one year. Given his delay of more than a year in filing his appeal, the General Division could not hear his challenge about voluntarily leaving.

[24] Unfortunately, the law does not give the Tribunal the discretion to allow more than one year to appeal to the General Division.<sup>3</sup>

[25] For the reasons I have mentioned above and after reviewing the appeal file, the General Division decision, and considering the Claimant's arguments in support of his application for permission to appeal, I have no choice but to find that the appeal has no reasonable chance of success.

## **Conclusion**

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

Pierre Lafontaine  
Member, Appeal Division

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<sup>2</sup> See section 52(2) of the DESD Act.

<sup>3</sup> *B. T. v Canada Employment Insurance Commission*, 2017 CanLII 91786 (SST).