[TRANSLATION]

Citation: *JN v Canada Employment Insurance Commission*, 2024 SST 182

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	J. N.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated December 20, 2023 (GE-23-2617)

Tribunal member:	Pierre Lafontaine
Decision date:	February 27, 2024
File number:	AD-24-70

Decision

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

Overview

[2] The Applicant (Claimant) stopped working for his employer. He made a claim for Employment Insurance (EI) regular benefits effective January 1, 2023.

[3] The Respondent (Commission) told the Claimant that he was not entitled to EI benefits because he voluntarily left his employment with the employer without just cause as defined in the law. The Claimant asked the Commission to reconsider. On reconsideration, the Commission upheld its initial decision. The Claimant appealed to the General Division.

[4] The General Division found that the Claimant voluntarily left his job. It found that he had reasonable alternatives to leaving. It decided that he did not have just cause under the law for voluntarily leaving his job.

[5] The Claimant now seeks permission from the Appeal Division to appeal the General Division's decision. He argues that the General Division exceeded its jurisdiction and made errors of fact and law.

Issue

[6] The law 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.

[7] 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 has to show that there is arguably a reviewable error based on which the appeal might succeed.

[8] 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.

I am not giving the Claimant permission to appeal

[9] The Claimant argues that the General Division exceeded its jurisdiction and made errors of fact and law.[1]

[10] Before the General Division, the Claimant said that he did not leave voluntarily. He argued that he did not leave to retire. He said that the work environment was toxic and that management bullied and threatened him at work for a long time.

[11] The General Division found that the Claimant voluntarily left his job. It found that after his manager had allowed him to work four days a week, he did not want to go back to working five days a week. In 2020, he filed a grievance over this. Two days before the arbitration hearing, to resolve the grievance, the parties signed a letter of agreement stating that the Claimant would voluntarily leave his job by December 31, 2022. The General Division found that the evidence did not support the Claimant's position that he had signed the agreement because his employer had threatened and bullied him at work.

[12] The General Division found that the Claimant had reasonable alternatives to leaving his job. He could have agreed to work five days a week pending the outcome of his grievance. He could have looked for another, more suitable job while still working.

[1] See the Claimant's full arguments at AD1-1 to AD1-54.

[13] The issue before the General Division was whether the Claimant had just cause under section 29 of the *Employment Insurance Act* (EI Act) for voluntarily leaving his job.

[14] Whether you had just cause for voluntarily leaving a job depends on whether, considering all the circumstances, you had no reasonable alternative to leaving.

[15] Despite the many circumstances described in section 29(c) of the EI Act that would amount to just cause for voluntarily leaving a job, the primary question remains the same: Did the claimant have reasonable alternatives to leaving?

[16] The evidence shows that the Claimant had the following options: proceed with the arbitration hearing or choose to sign the departure agreement proposed by his employer. His union met with the employer and, after discussion between all the parties, the Claimant chose the second option.

[17] The agreement says that the Claimant agreed to leave his job with the employer by December 31, 2022.[2] The parties acknowledged that the contents of the agreement accurately reflected what they had agreed on, and they declared that they had signed the agreement freely and after due consideration.[3]

[18] I am of the view that the General Division did not make any reviewable errors when it concluded from the evidence that the Claimant voluntarily left his job and that leaving was not his only reasonable option. He could have agreed to work five days a week to keep his job, at least until a decision was made by the arbitration board. He also could have continued his job search to find a more suitable job.[4]

[19] The Claimant made the decision with his union to leave his job on December 31, 2022. He chose not to proceed before the arbitration board. As the General Division

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[2] See the letter of agreement and settlement and release for grievance 2020-01 at clause 2.
[3] See the letter of agreement and settlement and release for grievance 2020-01 at clause 10.
[4] See *Stavropoulos v Canada (Attorney General)*, 2020 FCA 109. The Court found that the claimant had a choice, since he could have gone through the arbitration process to challenge the measures taken by his employer rather than choosing to leave his job.

noted, the evidence does not support that the employer forced the Claimant to sign the departure agreement.

[20] 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 his job. It is important to remember that the primary purpose of the EI Act is to compensate claimants who have lost their jobs involuntarily.

[21] An appeal to the Appeal Division is not an opportunity for the Claimant to present his case again and hope for a different outcome. I find that the Claimant has not raised any question of fact, law, or jurisdiction that could justify setting aside the decision under review.

[22] 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

[23] Permission to appeal is not granted. This means that the appeal will not proceed.

Pierre Lafontaine
Member, Appeal Division