



Citation: *CC v Canada Employment Insurance Commission*, 2023 SST 1649

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

# **Leave to Appeal Decision**

<b>Applicant:</b>	C. C.
<b>Respondent:</b>	Canada Employment Insurance Commission
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<b>Decision under appeal:</b>	General Division decision dated July 24, 2023 (GE-23-917)
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<b>Tribunal member:</b>	Pierre Lafontaine
<b>Decision date:</b>	November 20, 2023
<b>File number:</b>	AD-23-813

## Decision

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

## Overview

[2] The Applicant (Claimant) lost his job and applied for EI benefits. The Respondent (Commission) looked at his reasons for losing his job. It decided that he voluntarily left (or chose to quit) his job without just cause. 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 his job. It found that the Claimant could have attempted to discuss with his employer about his concerns or complain to the appropriate authority to help resolve the situation. The General Division concluded that the Claimant did not have just cause to leave his job under the law.

[4] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. He feels that it is unfair that he needs to pay the overpayment because he physically could not work for the employer because of his hip problems and did not want to participate in illegal work activities.

[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?

## Preliminary matters

[8] It is well established that the Appeal Division must consider the evidence presented to the General Division to decide the present leave to appeal application.<sup>1</sup>

## Analysis

[9] 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.

[10] 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 his 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.

[11] 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?**

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<sup>1</sup> *Sibbald v Canada (Attorney General)*, 2022 FCA 157.

[12] The Claimant submits that it is unfair that he needs to pay the overpayment because he physically could not work for the employer because of his hip problems and did not want to participate in illegal work activities.

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

[14] 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.

[15] The General Division found that the Claimant voluntarily left his job. It found that the Claimant could have attempted to discuss with his employer about his concerns or complain to the appropriate authority to help resolve the situation. The General Division concluded that the Claimant did not have just cause to leave his job under the law.

[16] The evidence does not support a conclusion that the Claimant was dismissed from his job. The employer wanted him to continue working but he refused. No evidence was presented to demonstrate the employer was performing illegal activities. The medical evidence presented to the General Division does not support the Claimant's position that he could no longer work for the employer. Had the Claimant accepted to return to work after his medical leave, he would have stayed employed.

[17] The evidence shows that the Claimant had reasonable alternatives to leaving his job when he did. He could have attempted to discuss his concerns with the employer, or file a complaint with the appropriate authority, but he did not so.

[18] A long line of authority has established that claimants have an obligation to discuss with their employer about issues related to work before leaving their job.<sup>2</sup> As concluded by the General Division, the Claimant did not show that he had explored reasonable alternatives to leaving his job when he did.

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<sup>2</sup> *White*, 2011 FCA 190; *Hernandez*, 2007 FCA 320; *Campeau*, 2006 FCA 376.

[19] In his leave to appeal application, the Claimant would essentially like to re-present his 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 his 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. He 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 General Division decision and considering the arguments of the Claimant in support of his 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