



[TRANSLATION]

Citation: *TJ v Canada Employment Insurance Commission*, 2024 SST 180

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant:
Representative:

T. J.
Denis Monette

Respondent:

Canada Employment Insurance Commission

Decision under appeal:

General Division decision dated
December 15, 2023 (GE-23-2319)

Tribunal member:

Pierre Lafontaine

Decision date:

February 26, 2024

File number:

AD-24-57

Decision

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

Overview

[2] The Applicant (Claimant) stopped working for his employer. He applied for Employment Insurance (EI) benefits.

[3] The Respondent (Commission) told him that he is not entitled to EI regular benefits because he voluntarily left his job for the employer without good cause under the law. The Claimant explained that he was dismissed and did not leave his job. 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 because he did not provide his employer with a medical certificate for the extension of his sick leave and did not return to his job at the end of his authorized leave. It found that the Claimant had reasonable alternatives to leaving his job. He should have made sure that his leave was extended on time, or reported for work if it was not. The General Division found that the Claimant did not have just cause for leaving his job under the law.

[5] The Claimant is now asking the Appeal Division for permission to appeal the General Division's decision. He argues that the employer could not assume that he had quit. He was on sick leave and did not intend to leave his job. The Claimant argues that the employer had an obligation to contact him before severing the employment relationship. It did not do so. So, it was a constructive dismissal.

Issue

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

Analysis

[7] 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.

[8] 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 but must establish that his 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.

[9] 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

[10] The Claimant argues that the employer could not assume that he had quit. He was on sick leave and did not intend to leave his job. The Claimant argues that the employer had an obligation to contact him before severing the employment relationship. It did not do so. So, it was a constructive dismissal.

[11] The Federal Court of Appeal has decided that, even if the reason for the loss of employment is stated as either misconduct or voluntary leaving without just cause, the

General Division's jurisdiction is to determine the merits of the disqualification from benefits.¹

[12] The General Division found that the Claimant voluntarily left his job because he did not provide his employer with a medical certificate for the extension of his sick leave and did not return to his job when his leave ended. It found that the Claimant had reasonable alternatives to leaving his job. He should have made sure that his leave was extended on time, or reported for work if it was not. The General Division found that the Claimant did not have just cause for leaving his job under the law.

[13] The evidence before the General Division shows that the Claimant's leave ended on December 23, 2022. He did not report for work at the end of his authorized sick leave. The Claimant extended his absence from work for a period that was not approved by his employer. So, he voluntarily left his job without just cause under the *Employment Insurance Act* (EI Act).

[14] As the General Division decided, the Claimant had reasonable alternatives to leaving his job. He should have made sure that his leave was extended on time, or reported for work if it was not.

[15] In addition, the Claimant's mistake about his return-to-work date also shows carelessness about his obligations to his employer. A claimant's failure to call their employer to warn them of their absence, or an unauthorized absence from work, amounts to misconduct under the EI Act.²

[16] In my view, the General Division correctly set out the applicable legal test for voluntary leaving. It applied this test to the facts of the case and considered whether the Claimant, having considered all the circumstances, had no reasonable alternative to leaving his job.

¹ See *Easson* (A-1598-92), *Dufour* (A-1398-92); and *Eppel* (A-3-95).

² Umpires have consistently held that the failure to call an employer to warn them of an absence amounts to misconduct under the *Employment Insurance Act* (CUB 18712, 18006, 17984, 26713, 32458 and 57141, 66436).

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

[18] 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

[19] Permission to appeal is refused. This means that the appeal will not proceed.

Pierre Lafontaine
Member, Appeal Division