



Citation: *DR v Canada Employment Insurance Commission*, 2023 SST 1693

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: D. R.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated August 29, 2023
(GE-23-1560)

Tribunal member: Pierre Lafontaine

Decision date: November 28, 2023

File number: AD-23-887

Decision

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

Overview

[2] The Applicant (Claimant) left her job as assistant manager of a local general store on December 6, 2022, and applied for 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 couldn't pay her benefits.

[3] The Commission says that, instead of leaving when she did, the Claimant could have discussed her concerns with human resources or upper management and should have found other employment before she quit. After an unsuccessful reconsideration, the Claimant appealed to the General Division.

[4] The General Division found that the Claimant voluntarily left her job. It found that the Claimant had shown that her employer had practices that were contrary to law. The General Division found that the Claimant had other reasonable alternatives to leaving when she did. It concluded that the Claimant did not have just cause for leaving her employment.

[5] The Claimant seeks leave to appeal of the General Division's decision to the Appeal Division. She submits that she had no choice but to leave because her employer put her in a position to break the law. She is not a lawbreaker. She submits that she was diagnosed with Hepatitis A and the employer never took it seriously.

[6] I must decide whether the Claimant has raised some reviewable error of the General Division upon which the appeal might succeed.

[7] I refuse leave to appeal because the Claimant's appeal has no reasonable chance of success.

Issue

[8] Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

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 her 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 to appeal, 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?

[12] The Claimant submits that she had no choice but to leave because her employer put her in a position to break the law. She is not a lawbreaker. She submits that she was diagnosed with Hepatitis A and the employer never took it seriously.

[13] The General Division had to determine whether the Claimant had just cause to voluntarily leave her employment. This must be determined at the time she 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, after contracting Hepatitis A, the Claimant nonetheless continued to work for months before quitting her job, therefore not demonstrating that her working conditions constituted a danger to her health.

[16] The General Division found that the Claimant's employer had practices that were contrary to law. It found that the Claimant was asked to handle and sell alcohol without the proper *Serve It Right Saskatchewan* certificate. The General Division found that the Claimant could have discussed this issue with the manager and escalate it to higher management or human resources. She could have refused to do any work related to alcohol and report her employer to the appropriate authority.

[17] The evidence shows that the Claimant did not raise the alcohol issue with human resources or try to get assistance from a provincial authority, in order to refuse alcohol related tasks, before leaving her job.

[18] The evidence also shows that the Claimant left her job because she was not happy with the way her manager was handling another employee's workload and behavior. She felt this was creating a toxic work environment. The employer acknowledged that they had performance problems with said employee. However, the evidence does not support a conclusion that the Claimant's working conditions were so

intolerable that she had to leave when she did. She could have continued working while looking for another job.

[19] It is well-established that when a claimant is not satisfied with their working conditions, they have an obligation to look for work prior to leaving their job. The Claimant didn't do that.¹

[20] Unfortunately, for the Claimant, an appeal to the Appeal Division of the Tribunal is not a new hearing where a party can re-present their evidence and hope for a new, favourable outcome.

[21] In her 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. She 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.

[22] For the above-mentioned reasons and after reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Claimant in support of her request for leave to appeal, I find that the appeal has no reasonable chance of success.

Conclusion

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

Pierre Lafontaine
Member, Appeal Division

¹ See GD3-16: In her application for benefits, the Claimant indicated that she did not look for work prior to leaving her job.