



Citation: *PA v Canada Employment Insurance Commission*, 2023 SST 1227

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: P. A.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated August 8, 2023
(GE-23-165)

Tribunal member: Pierre Lafontaine

Decision date: November 15, 2023

File number: AD-23-798

Decision

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

Overview

[2] The Applicant (Claimant) left his job and applied for EI benefits. The Respondent (Commission) looked at his reasons for leaving. It decided that he voluntarily left (or chose to quit) his job without just cause, so it couldn't pay him benefits. 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 made a personal decision to move to St. Catharines, then quit his job because it was too far to travel to work. The General Division found that the Claimant could have attempted to carpool or find other employment before quitting his job. It 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 submits that he and his representative did not know about the hearing date of July 31, 2023. The Claimant submits that it is their fault and they are sorry about it. They are asking for another hearing with an interpreter.

[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?

Analysis

[8] 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.

[9] 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.

[10] 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?

[11] The Claimant submits that him and his representative did not know about the hearing date of July 31, 2023. The Claimant submits that its their fault and they are sorry about it. They are asking for another hearing with an interpreter.

The hearing date

[12] The General Division addressed the absence of the Claimant and his representative at the hearing. It noted that the Claimant and his designated

representative were sent an e-mail notification to the representative's e-mail address on July 19, 2023, detailing July 31, 2023, at 10:00 A.M., as the new scheduled time and date for the hearing.

[13] The General Division called the Claimant using the designated representative's telephone number on July 24, 2023. The Tribunal spent six minutes on the phone confirming the time, date and how to join the teleconference hearing. The Tribunal representative recorded that "they" did not have any questions and "they" confirmed "their" intention to attend the hearing.

[14] On the day of the hearing, the General Division attempted to reach the Claimant and his representative on the phone without success. It proceeded with the hearing in their absence.

[15] The law says that an oral hearing may take place without a party if the Tribunal is of the opinion that the party received the notice of hearing.¹

[16] In the present case, the Claimant and his representative were clearly aware of the hearing date. They had received notice of hearing and had confirmed their presence during the reminder call. The Claimant and his representative missed the hearing by their own fault.

[17] I see no violation of a principle of natural justice made by the General Division when it proceeded with the hearing in the absence of the Claimant and his representative.

[18] This ground of appeal has no reasonable chance of success.

Voluntary leave

[19] 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.

¹ See Section 58 of the *Social Security Tribunal Rules of Procedure*.

[20] 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.

[21] The General Division found that the Claimant voluntarily left his job. It found that the Claimant made a personal decision to move to St. Catharines, then quit his job because it was too far to travel to work. The General Division found that the Claimant could have attempted to carpool or find other employment in his new area before quitting his job. It concluded that the Claimant did not have just cause to leave his job under the law.

[22] The evidence shows that the Claimant quit his job. He moved from Mississauga to St-Catharines, Ontario, on August 1, 2022. He was able to drive to work from his new location, but the extra 60 kilometers one-way was exhausting.

[23] As stated by the General Division, the medical evidence filed does not support a conclusion that he had to leave his job when he did. Although it was not easy, the Claimant could have stayed in his house or in the surrounding area until it sold or continued to drive to work from his new location. This would have given him time to find another job closer to his new home.

[24] The Claimant made the personal decision to move far away from his workplace knowing that this would create transportation issues. A long line of authority has established that transportation problems do not constitute just cause for leaving a job.²

[25] As concluded by the General Division, the Claimant did not show that he had explored reasonable alternatives to leaving his job when he did.

[26] 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 of

² *M. U. v Canada Employment Insurance Commission*, 2019 SST 39 (CanLII), *C. B. v Canada Employment Insurance Commission*, 2017 CanLII 91800 (SST), CUBs 16658A, 26708, 40246, 58249A, 64665 and 72413.

the Tribunal is not a new hearing where a party can re-present their evidence and hope for a new, favourable outcome.

[27] 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.

[28] 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 his request for leave to appeal, I find that the appeal has no reasonable chance of success.

Conclusion

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

Pierre Lafontaine
Member, Appeal Division