



Citation: *KS v Canada Employment Insurance Commission*, 2023 SST 1742

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

**Leave to Appeal Decision**

**Applicant:** K. S.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated September 13, 2023  
(GE-23-1942)

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**Tribunal member:** Melanie Petrunia

**Decision date:** December 4, 2023

**File number:** AD-23-933

## **Decision**

[1] Leave (permission) to appeal is refused. The appeal will not proceed.

## **Overview**

[2] The Applicant, K. S. (Claimant), left his job and applied for employment insurance (EI) benefits.

[3] The Respondent, the Canada Employment Insurance Commission (Commission) decided that the Claimant voluntarily left his job without just cause and could not be paid benefits.

[4] The Claimant appealed this decision to the Tribunal's General Division. He argued that he quit for a number of reasons. The General Division found that the Claimant did not have just cause to quit his job because there were reasonable alternatives to leaving when he did. It dismissed his appeal.

[5] The Claimant now wants to appeal the General Division decision to the Tribunal's Appeal Division. However, he needs permission for his appeal to move forward. He argues that the General Division made an important error of fact in its decision.

[6] I have to decide whether there is some reviewable error of the General Division on which the appeal might succeed. I am refusing leave to appeal because the Claimant's appeal has no reasonable chance of success.

## **Issues**

[7] The issues are:

- a) Is there an arguable case that the General Division based its decision on an important error of fact?
- b) Does the Claimant raise any other reviewable errors of the General Division upon which the appeal might succeed?

## I am not giving the Claimant permission to appeal

[8] The legal test that the Claimant needs to meet on an application for leave to appeal is a low one: Is there any arguable ground on which the appeal might succeed?<sup>1</sup>

[9] To decide this question, I focused on whether the General Division could have made one or more of the relevant errors (or grounds of appeal) listed in the *Department of Employment and Social Development Act* (DESD Act).<sup>2</sup>

[10] An appeal is not a rehearing of the original claim. Instead, I must decide whether the General Division:

- a) failed to provide a fair process;
- b) failed to decide an issue that it should have, or decided an issue that it should not have;
- c) based its decision on an important factual error;<sup>3</sup> or
- d) made an error in law.<sup>4</sup>

[11] Before the Claimant can move on to the next stage of the appeal, I have to be satisfied that there is a reasonable chance of success based on one or more of these grounds of appeal. A reasonable chance of success means that the Claimant could argue his case and possibly win. I should also be aware of other possible grounds of appeal not precisely identified by the Claimant.<sup>5</sup>

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<sup>1</sup> This legal test is described in cases like *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12 and *Ingram v Canada (Attorney General)*, 2017 FC 259 at para 16.

<sup>2</sup> DESD Act, s 58(2).

<sup>3</sup> The language of section 58(1)(c) actually says that the General Division will have erred if it bases its decision on a finding of fact that it makes in a perverse or capricious manner or without regard for the material before it. The Federal Court has defined perverse as “willfully going contrary to the evidence” and defined capricious as “marked or guided by caprice; given to changes of interest or attitude according to whim or fancies; not guided by steady judgment or intent” *Rahi v Canada (Minister of Citizenship and Immigration)* 2012 FC 319.

<sup>4</sup> This paraphrases the grounds of appeal.

<sup>5</sup> *Karadeolian v Canada (Attorney General)*, 2016 FC 615; *Joseph v Canada (Attorney General)*, 2017 FC 391.

## **There is no arguable case that the General Division erred**

[12] The law says that a person has just cause for voluntarily leaving their job if, having regard to all the circumstances, they had no reasonable alternative to quitting.<sup>6</sup> The General Division had to decide whether the Claimant left his job without just cause. It set out the circumstances that existed when the Claimant quit his job.

[13] The Claimant left his job to move to Halifax.<sup>7</sup> He had graduated university but the wages he earned at his job did not allow him to live independently.<sup>8</sup> He was residing with his parents when his father was promoted and decided to relocate to Halifax. The Claimant's mother planned to rent out the family home and also move in the fall.<sup>9</sup>

[14] The Claimant had been getting fewer hours at his job and didn't feel that there were opportunities to advance.<sup>10</sup> He applied to take a French language course, in-person, in Halifax starting on April 1, 2023.<sup>11</sup> In early March 2023, he gave his employer notice that he would be leaving.<sup>12</sup>

[15] The Claimant had a job interview lined up for shortly after he moved and ended up getting a part-time job.<sup>13</sup> He attended the language course and continued to look for work.

[16] The General Division noted that the Claimant received an acceptance letter in the third week of March 2023 for the French language course, indicating that the course would be online instead of in-person.<sup>14</sup>

[17] The General Division found that, when the Claimant quit his job, the relevant circumstances were:

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<sup>6</sup> See section 29(c) of the EI Act.

<sup>7</sup> General Division decision at para 14.

<sup>8</sup> General Division decision at para 15.

<sup>9</sup> General Division decision at para 17.

<sup>10</sup> General Division decision at para 15.

<sup>11</sup> General Division decision at para 18.

<sup>12</sup> General Division decision at para 19.

<sup>13</sup> General Division decision at paras 20 and 24.

<sup>14</sup> General Division decision at para 21.

- a) The Claimant would be starting a French language course online on April 1, 2023;
- b) He was getting fewer hours at work;
- c) He was moving to Halifax to live with his father and pursue new opportunities;
- d) He had a job interview lined up; and
- e) He believed that the family home would be rented out in the fall, and he would not be able to continue living there.<sup>15</sup>

[18] Taking these circumstances into consideration, the General Division found that the Claimant had a reasonable alternative to leaving his job when he did. It found that the Claimant could have continued to work while attending his course online. He could have continued to look for better work opportunities while he remained at his job.<sup>16</sup>

[19] In his application for leave to appeal, the Claimant argues that the General Division did not take into account all of the necessary factors and details when looking at his reasons for leaving his job. Specifically, he says that the General Division did not consider that his hours had been cut back prior to his leaving.<sup>17</sup>

[20] I find that there is no arguable case that the General Division failed to take the Claimant's arguments about his reduced hours into consideration. The General Division clearly noted that the Claimant's hours had been reduced.<sup>18</sup> The argument was raised at the hearing that the Claimant's hours had gone down a bit. He said that he was receiving less than full-time hours, closer to 32 hours per week.<sup>19</sup>

[21] The General Division noted the reduced hours as one of the circumstances that existed at the time that the Claimant left his job. There is no arguable case that is ignored this fact or the Claimant's arguments about his reduced hours. However, after

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<sup>15</sup> General Division decision at para 28.

<sup>16</sup> General Division decision at para 33.

<sup>17</sup> AD1-3

<sup>18</sup> General Division decision at paras 28 and 31.

<sup>19</sup> Recording of General Division hearing at 9:20.

considering all the circumstances, it found that the Claimant had a reasonable alternative to leaving.

[22] I cannot reweigh the evidence in order to come to a different conclusion more favourable to the Claimant. The Appeal Division has a limited role, so I cannot intervene to reweigh the evidence about the application of settled legal principles to the facts of the case.<sup>20</sup> The General Division stated and applied the law correctly when it decided that the Claimant did not have just cause to leave his job.

[23] Aside from the Claimant's arguments, I have also considered the other grounds of appeal. The Claimant has not pointed to any procedural unfairness on the part of the General Division, and I see no evidence of procedural unfairness. There is no arguable case that the General Division made an error of jurisdiction.

[24] The Claimant has not identified any errors of the General Division upon which the appeal might succeed. As a result, I am refusing leave to appeal.

## **Conclusion**

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

Melanie Petrunia  
Member, Appeal Division

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<sup>20</sup> See *Garvey v Canada (Attorney General)*, 2018 FCA 118.