



[TRANSLATION]

Citation: *RR v Canada Employment Insurance Commission and X*, 2024 SST 265

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

# **Leave to Appeal Decision**

<b>Applicant:</b>	R. R.
<b>Respondent:</b>	Canada Employment Insurance Commission
<b>Added Party:</b>	X
<b>Representative:</b>	Nick Asselin

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<b>Decision under appeal:</b>	General Division decision dated January 29, 2024 (GE-23-1537)
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<b>Tribunal member:</b>	Pierre Lafontaine
<b>Decision date:</b>	March 14, 2024
<b>File number:</b>	AD-24-147

## Decision

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

## Overview

[2] The Applicant (Claimant) worked as a truck driver for the employer. He made an initial claim for Employment Insurance (EI) benefits. The Respondent (Commission) looked at the reasons the Claimant lost his job. It decided that he was let go but that it was not because of misconduct. So, it decided that he was entitled to benefits.

[3] The employer asked the Commission to reconsider this decision. It said that the Claimant voluntarily left his job. The Commission upheld its initial decision. The employer appealed to the Tribunal's General Division.

[4] The General Division found that the Claimant voluntarily left his job because he stopped showing up for work as of July 13, 2022. It found that the employer asked the Claimant to confirm a verbal agreement in writing concerning certain amounts owing, but the Claimant refused. The General Division found that the Claimant stopped showing up for work after that. It found that he could have looked into his rights or looked for another job before quitting. It decided that he did not have just cause for leaving his job.

## Issue

[5] 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.

[6] 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; he must instead establish that the 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.

[7] 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.

## **Preliminary remarks**

[8] To decide this application for permission to appeal, I have listened to the recording of the December 22, 2023, hearing before the General Division.

[9] In support of his application for permission to appeal, the Claimant provided a detailed account of the events that led to the end of his employment. He submitted new documents in support of his position.<sup>1</sup>

[10] It is well established that I must consider only the evidence that was before the General Division in deciding this application for permission to appeal. An appeal to the Appeal Division is not a *de novo*, or fresh, hearing where a party can present new evidence.<sup>2</sup>

## **I am not giving the Claimant permission to appeal**

[11] The Claimant argues that the General Division did not give him time to present his case because it allowed his former employer to speak. He says that he was not given an opportunity to answer the employer's allegations. He argues that the General

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<sup>1</sup> See AD1B-1 to AD1B-65.

<sup>2</sup> See *Sibbald v Canada (Attorney General)*, 2022 FCA 157. Except in exceptional circumstances not applicable here.

Division member was disrespectful toward him and that it was only after reading the decision that he realized the topic was voluntary leaving.

[12] In support of his application for permission to appeal, the Claimant responded to the General Division decision and provided a detailed account of the events that led to the end of his employment. He submitted new documents in support of his position.<sup>3</sup>

### **Principle of natural justice**

[13] A principle of natural justice refers to the fundamental rules of procedure exercised by persons and tribunals with judicial or quasi-judicial jurisdiction. The principle exists to ensure that every person is given adequate notice to appear, is afforded a reasonable opportunity to present their case and to defend themselves, and can expect the decision to be made free of bias or a reasonable apprehension or appearance of bias.

[14] I listened carefully to the recording of the hearing that the General Division held on December 22, 2023. It was clear to me that the Claimant was given a reasonable opportunity to present his side of the story and to argue his case before the General Division.

[15] The General Division member listened to his testimony and considered his arguments in support of his position. She also allowed him to submit documents after the hearing before making her decision, to make sure he could fully present his case. She clearly explained his position in her decision.

[16] It is true that the General Division member did not want to hear from the Claimant after the hearing concluded. This was necessary to preserve each party's right to a fair hearing. So, the member could not allow the Claimant to continue presenting his case once the hearing was over.

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<sup>3</sup> See AD1B-1 to AD1B-65.

[17] I saw nothing that would allow me to conclude that the General Division member deviated from the standard in such a manner as to give rise to a reasonable apprehension or appearance of bias.

[18] I find that this ground of appeal has no reasonable chance of success.

### **Voluntary leaving**

[19] 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.<sup>4</sup>

[20] In other words, the General Division has to determine, based on the evidence before it, the reason for the separation from employment and whether the claimant should be disqualified under the law.

[21] The General Division found that the Claimant voluntarily left his job because he stopped showing up for work as of July 13, 2022. It found that the employer asked the Claimant to confirm a verbal agreement in writing concerning certain amounts owing, but the Claimant refused. The General Division found that the Claimant stopped showing up for work after that. It found that he could have looked into his rights or looked for another job before quitting. It decided that he did not have just cause for leaving his job.

[22] At the hearing, the Claimant said that he did not know why he was let go. He said that he got a call from his employer on July 13, 2022, asking him to turn in the keys to the truck. According to him, his employer also verbally asked him to resign, and he refused.

[23] The employer explained that on July 13, 2022, it asked the Claimant to put in writing a verbal agreement concerning the amounts he owed it, since he did not seem to

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<sup>4</sup> See *Easson* (A-1598-92), *Dufour* (A-1398-92), and *Eppel* (A-3-95).

want to fulfill his verbal promise. He was against putting it in writing. According to the employer, the Claimant stopped showing up for work after that, so it still had his personal belongings.

[24] The General Division placed more weight on the employer's version of events because there was ample evidence on file to support its description of the problematic situations. The General Division found that the employer's version of events at the hearing matched the one it had given in its request for reconsideration. The Claimant refused to enter into a repayment agreement with it and stopped showing up for work.

[25] The General Division found that the Claimant's version of events was fluid and inconsistent such that his credibility was greatly affected. It considered that he mentioned being forced to resign over an incident from March 2022, several months before his employment ended. Then, he said that he did not know why his employer had asked him to resign. When he was asked how his employer had asked him to resign, his explanations remained vague, and he said that he did not remember.

[26] In the General Division's view, the text message the Claimant submitted after the hearing did not prove that the employer let him go. It found that the date of the text message was not visible and that the employer rather asked the Claimant to turn in the keys to the truck and collect his personal belongings that were in the truck.

[27] The General Division decided that the Claimant was not let go but rather voluntarily left his job when he stopped showing up for work. So, it did not consider the issue of misconduct.

[28] A claimant whose employment ends because they gave their employer notice of their intention to leave their job, whether verbally, in writing, **or by their actions**, is considered to have left their job voluntarily under the law.

[29] The General Division found that the Claimant had reasonable alternatives to leaving his job. He could have looked into his rights or looked for another job to avoid placing himself in an unemployment situation.

[30] I see no reviewable error made by the General Division. It correctly stated the legal test for voluntary leaving. It applied this test to the facts of the case and looked at whether, after considering all of the circumstances, the Claimant had no reasonable alternative to leaving his job. I see no basis for intervening on the issue of credibility, as assessed by the General Division.

[31] I have to reiterate that an appeal to the Appeal Division is not an opportunity for a claimant to re-argue their case and hope for a different outcome. The Appeal Division does not have the authority to retry a case or to substitute its discretion for that of the General Division.

[32] I find that the Claimant has not raised any question of fact, law, or jurisdiction that could justify setting aside the decision under review.

[33] 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**

[34] Permission to appeal is not granted. This means that the appeal will not proceed.

Pierre Lafontaine  
Member, Appeal Division