



Citation: *CS v Canada Employment Insurance Commission*, 2024 SST 219

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant: C. S.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated December 13, 2023
(GE-23-3203)

Tribunal member: Melanie Petrunia

Decision date: March 5, 2024

File number: AD-24-32

Decision

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

Overview

[2] The Applicant, C. S. (Claimant), quit his job and applied for employment insurance (EI) benefits. The Respondent, the Canada Employment Insurance Commission (Commission), decided that the Claimant was disqualified from receiving benefits because he did not have just cause for leaving his job.

[3] The Claimant appealed this decision to the Tribunal's General Division. 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.

[4] 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.

[5] 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.

Issue

[6] 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

[7] 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?¹

[8] 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).²

[9] 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;³ or
- d) made an error in law.⁴

[10] 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.⁵

¹ 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.

² DESD Act, s 58(2).

³ 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.

⁴ This paraphrases the grounds of appeal.

⁵ *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

[11] 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.⁶ The General Division had to decide whether the Claimant left his job without just cause.

[12] The Claimant worked for a forest products company. He argued that he quit because of safety concerns at the workplace. The Claimant worked on a slash deck cutting large logs and wanted a cage on the window of his workspace.⁷ The General Division accepted that dangerous conditions were a factor when he decided to quit.⁸

[13] The General Division then considered whether the Claimant had reasonable alternatives to quitting his job when he did. It found that the Claimant could have looked for other work before he quit, and that he could have raised his safety concerns with the appropriate government agency.⁹

[14] The Claimant argued before the General Division that he couldn't look for other work before he quit because he had to leave suddenly. The General Division considered this argument but was not persuaded by it. It found that the Claimant had worked for the employer for a number of years. He said that he had safety concerns for a long time. The General Division found that the Claimant did not have to leave on the day he quit and could not have searched for a job first.¹⁰

[15] In his application for leave to appeal, the Claimant argues that the General Division made an important error of fact. For this ground of appeal, the General Division

⁶ See section 29(c) of the EI Act.

⁷ GD3-10

⁸ General Division decision at para 36.

⁹ General Division decision at paras 44 and 45.

¹⁰ General Division decision at para 44.

has to have based its decision on a finding of fact that ignored or misunderstood relevant evidence, or where its finding does not rationally follow from the evidence.¹¹

[16] The Claimant says that he felt he had exhausted all alternatives. He argues that he put out applications for other jobs but wasn't home to receive calls due to his schedule.¹²

[17] I find that there is no arguable case that the General Division made an error of fact when it found that it was a reasonable alternative for the Claimant to have tried to find another job before he quit. I have listened to the hearing before the General Division. The Claimant was asked about applying for other jobs before he left and said that he should have looked for work, but it was a spur of the moment decision to quit.¹³

[18] The Claimant did not argue before the General Division that he had applied for other jobs. The General Division did not err by not considering evidence that wasn't before it. The General Division stated and applied the law correctly when it decided that the Claimant did not have just cause to leave his job.

[19] 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 or an error of law.

[20] 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.

¹¹ See section 58(1)(c) of the EI Act which states "the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it."

¹² AD1-3

¹³ Recording of General Division hearing starting at 33:00.

Conclusion

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

Melanie Petrunia
Member, Appeal Division