



Citation: *BL v Canada Employment Insurance Commission*, 2024 SST 245

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

# **Leave to Appeal Decision**

**Applicant:** B. L.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated February 1, 2024  
(GE-24-153)

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**Tribunal member:** Melanie Petrunia

**Decision date:** March 10, 2024

**File number:** AD-24-111

## Decision

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

## Overview

[2] The Applicant, B. L. (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 error of law 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 made an error of law in its decision?
- 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?<sup>1</sup>

[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).<sup>2</sup>

[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;<sup>3</sup> or
- d) made an error in law.<sup>4</sup>

[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.<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**

[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.<sup>6</sup> The General Division had to decide whether the Claimant left his job without just cause.

[12] The Claimant worked for a roofing company for approximately three weeks. He quit because he was concerned with his health and safety at the workplace. The Claimant said that the employer failed to use safety equipment, such as harness, which created a dangerous environment.<sup>7</sup>

[13] The Claimant had initially told the Commission that he quit because he wasn't getting enough hours of work. The General Division accepted that there were two relevant factors when he decided to quit.<sup>8</sup> He did not feel that he was getting enough hours and the working conditions were a danger to his health and safety.<sup>9</sup>

[14] 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 raised his safety concerns with the employer to see if changes could be made to address those concerns.<sup>10</sup>

[15] In his application for leave to appeal, the Claimant argues that the General Division made an error of law. He says that he clearly stated that he had a mental health issue with this employer and that the law says a person has just cause if they quit because of health reasons.<sup>11</sup>

[16] I have reviewed the file material before the General Division and listened to the recording of the hearing before the General Division. In his Notice of Appeal to the

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

<sup>7</sup> GD2-5

<sup>8</sup> General Division decision at para 27.

<sup>9</sup> General Division decision at para 29

<sup>10</sup> General Division decision at para 39.

<sup>11</sup> AD1-5

General Division, the Claimant stated that the work was unsafe and dangerous and that he felt uncomfortable working in those conditions.<sup>12</sup>

[17] At the hearing, the General Division asked the Claimant about previous statements that he made about feeling unfit and mentally incapable of working for the employer. The Claimant stated that he was referring to being mentally unprepared to risk his health and safety at the worksite without proper safety equipment. He stated that these unsafe conditions caused him stress.<sup>13</sup>

[18] The General Division responded to the arguments raised by the Claimant. It accepted his evidence that he felt that the working conditions posed a danger to his health and safety.<sup>14</sup> I have not found evidence of the Claimant clearly arguing that he had a mental health issue. The Claimant raised his mental health in the context of his concerns about the safety of the workplace, which was addressed by the General Division.

[19] I find that there is no arguable case that the General Division made an error of law by not directly considering the Claimant's mental health. The General Division addressed the arguments that the Claimant put forward. It accepted his evidence that the workplace was a danger to his health and safety. However, it found that it was a reasonable alternative to speak to the employer about his concerns before he quit.

[20] The Claimant did not argue before the General Division that he had a mental health issue with this employer, as he states in his application for leave. 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.

[21] 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

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<sup>12</sup> GD2-5

<sup>13</sup> Recording of General Division hearing starting at 32:30.

<sup>14</sup> General Division decision at para 29.

case that the General Division made an error of jurisdiction or based its decision on any factual errors.

[22] 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**

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

Melanie Petrunia  
Member, Appeal Division