Citation: *X v Canada Employment Insurance Commission and NH*, 2024 SST 241

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	X
Respondent:	Canada Employment Insurance Commission
Added Party:	N. H.

Decision under appeal:	General Division decision dated December 29, 2023 (GE-23-3048)

Tribunal member:	Melanie Petrunia
Decision date:	March 10, 2024
File number:	AD-24-43

Decision

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

Overview

[2] The Added Party in this matter, N. H. (Claimant), worked for the Applicant, X (Employer). She stopped work on April 27, 2023, and applied for employment insurance (EI) benefits.

[3] The Respondent, the Canada Employment Insurance Commission (Commission) decided that the Claimant voluntarily left her job with just cause because leaving was the only reasonable alternative. The Employer appealed this decision to the Tribunal's General Division.

[4] The General Division dismissed the Employer's appeal. It decided that the Claimant did not leave her job voluntarily because she did not have a choice whether to stay or leave. It agreed with the Commission that the Claimant was not disqualified from receiving benefits.

[5] The Employer now wants to appeal the General Division decision to the Tribunal's Appeal Division. However, it needs permission for its appeal to move forward. The Employer argues that the General Division based its decision on an important error of fact.

[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 when it found that there was no formal resignation provided to the Employer?

b) Does the Employer raise any other reviewable errors of the General Division upon which the appeal might succeed?

I am not giving the Employer permission to appeal

[8] The legal test that the Employer 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]

[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).[2]

[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;[3] or

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[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.

d) made an error in law.[4]

[11] Before the Employer 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 Employer could argue its case and possibly win. I should also be aware of other possible grounds of appeal not precisely identified by the Employer.[5]

There is no arguable case that the General Division erred

[12] The Employer had requested that the appeal be decided based on written submissions. The General Division decided to hold a hearing and advised the Employer that it would send the recording of the hearing to the Employer with an opportunity to respond in writing.[6]

[13] The Claimant did not attend the hearing and the General Division decided the appeal based on the record before it. It took into consideration the Commission's file and the Employer's Notice of Appeal.

[14] The General Division found that the Claimant did not have a choice whether to stay or leave her employment. It found that she enquired about her schedule and was told not to come in.[7] The General Division stated that there is no resignation letter on file and the Claimant had told the Commission that she was forced to resign. It found that the Claimant did not quit voluntarily.[8]

[15] The Employer says that the General Division made an error of fact when it found that the Claimant did not quit because there was no resignation letter on file.[9] For this ground of appeal, the General Division has to have based its decision on a finding of

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[4] This paraphrases the grounds of appeal.
[5] *Karadeolian v Canada (Attorney General)*, 2016 FC 615; J*oseph v Canada (Attorney General)*, 2017 FC 391.
[6] GD6 and GD7
[7] General Division decision at para 14.
[8] General Division decision at para 15.
[9] AD1

fact that ignored or misunderstood relevant evidence, or made a finding that does not rationally follow from the evidence.[10]

[16] The Employer argues that the Claimant told them verbally that she was resigning and confirmed this in an email.[11] The Employer has attached documents to their application for leave to appeal which was not previously provided.

[17] I am not able to consider new evidence at the Appeal Division. There are a few exceptions to this rule, but none apply here.[12] The courts have consistently said that the Appeal Division does not accept new evidence. An appeal is not a redo based on new evidence, but a review of the General Division decision based on the evidence it had before it.[13]

[18] The documents that the Employer is relying on are not found in the documents that were before the General Division. The General Division did not err by not considering evidence that was not before it. It explained, with reference to the evidence, the reasons for its findings. I cannot reweigh the evidence to come to a different conclusion. The General Division based its decision on relevant evidence.

[19] The Employer also argues that there was no need to discuss the Claimant's upcoming schedule because she had already resigned. It says that no one forced her to resign.[14] I find that these arguments do not point to any errors of fact by the General Division. As stated above, the General Division based its decision on the evidence it had before it and explained the reasons for its finding with reference to that evidence.

[20] Aside from the Employer's arguments, I have also considered the other grounds of appeal. The Employer has not pointed to any procedural unfairness on the part of the

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[10] 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."
[11] AD1-8
[12] Although the context is somewhat different, the Appeal Division normally applies the exceptions to considering new evidence that the Federal Court of Appeal described in *Sharma* v *Canada (Attorney General*), 2018 FCA 48 at paragraph 8.
[13] See *Gittens v. Canada (Attorney General),* 2019 FCA 256 at para 13.
[14] AD1-8

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.

[21] The Employer 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

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

Melanie Petrunia
Member, Appeal Division