



Citation: *RS v Canada Employment Insurance Commission*, 2024 SST 239

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: R. S.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated January 23, 2024
(GE-23-3501)

Tribunal member: Melanie Petrunia

Decision date: March 10, 2024

File number: AD-24-86

Decision

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

Overview

[2] The Applicant, R. S. (Claimant), stopped working and applied for employment insurance (EI) benefits. In his application for benefits, the Claimant said that he had been dismissed.

[3] The Respondent, the Canada Employment Insurance Commission (Commission), decided that the Claimant voluntarily left his employment without just cause and was disqualified from receiving benefits.

[4] The Claimant appealed the Commission's decision to the Tribunal's General Division. He argued that he was told by the employer that he was not a good fit after one day of work. The General dismissed the appeal. It found that the Claimant voluntarily left his employment without just cause.

[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 error because he was told he was not a good fit after his first day of work.

[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.

Issue

[7] Does the Claimant raise any 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?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
- d) made an error in law.⁴

[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.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

[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.⁶ The General Division had to decide whether the Claimant was dismissed or quit. If it decided he quit, it then had to decide if the Claimant had reasonable alternatives to leaving.

[13] In his application for leave to appeal, the Claimant argues that he was told that he was not a good fit for the job on his first day of work. He says he received a text message the following day saying his position would be filled and not to return.⁷

[14] The General Division acknowledged the Claimant's argument that he was dismissed when his employer told him he was not a good fit after one day on the job. It found that there was no evidence to support the Claimant's argument that he was dismissed.⁸

[15] The General Division found that the manager directed the supervisor to contact the Claimant when he failed to show up for work.⁹ The Claimant was told that the employer would have to hire someone else if he did not return.¹⁰ A text message on the file shows the employer messaging the Claimant to say that they assume he was not interested in the position because he did not show up for two days.¹¹

[16] The General Division based its decision that the Claimant had quit on relevant evidence in the file. There is no arguable case that the General Division made an error of fact in making this determination.

⁶ See section 29(c) of the EI Act.

⁷ AD1-5

⁸ General Division decision at para 16.

⁹ General Division decision at para 16.

¹⁰ General Division decision at para 17.

¹¹ GD3-33

[17] The General Division then found that the Claimant had reasonable alternatives to quitting including finding out from the employer why he was not a good fit, if that was his belief, or remaining employed until he found a new job.¹²

[18] 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.

[19] 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

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

Melanie Petrunia
Member, Appeal Division

¹² General Division decision at paras 25, 27 and 32.