



Citation: *SD v Canada Employment Insurance Commission*, 2024 SST 282

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: S. D.
Representative: B. C.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated January 16, 2024
(GE-23-3307)

Tribunal member: Janet Lew

Decision date: March 19, 2024
File number: AD-24-72

Decision

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

Overview

[2] The Applicant, S. D. (Claimant), is seeking leave to appeal the General Division decision. The General Division found that the Claimant did not have just cause for leaving her job when she did. It found that she had reasonable alternatives to leaving her job. As a result, the General Division found that the Claimant was disqualified from receiving Employment Insurance benefits.

[3] The Claimant argues that she had just cause for leaving her job as she had to accompany her common-law partner to another residence. She argues that the General Division was biased against her because she was in a same-sex relationship.

[4] The Claimant also argues that the General Division was not procedurally fair. She argues that “[She] was not heard and considered fairly.”¹ She argues that, if she had known the case that she had to meet, she would have provided more evidence to prove her case. She also argues that the General Division failed to contact witnesses.

[5] Before the Claimant can move ahead with the appeal, I have to decide whether the appeal has a reasonable chance of success. In other words, there has to be an arguable case.² If the appeal does not have a reasonable chance of success, this ends the matter.³

[6] I am not satisfied that the appeal has a reasonable chance of success. Therefore, I am not giving permission to the Claimant to move ahead with the appeal.

¹ See Claimant's Application to the Appeal Division: Employment Insurance, at AD 1-5.

² See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

³ Under section 58(2) of the *Department of Employment and Social Development (DESD) Act*, I am required to refuse permission if I am satisfied "that the appeal has no reasonable chance of success."

Issues

[7] The issues are as follows:

- (a) Is there an arguable case that the General Division member was biased or that there was a reasonable apprehension of bias?
- (b) Is there an arguable case that the General Division made any procedural errors?

Analysis

I am not giving the Claimant permission to appeal

[8] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success. A reasonable chance of success exists if the General Division may have made a jurisdictional, procedural, legal, or a certain type of factual error.⁴

[9] For these types of factual error, the General Division had to have based its decision on an error that it made in a perverse or capricious manner, or without regard for the evidence before it.⁵

The Claimant does not have an arguable case that the General Division member was biased or that there was a reasonable apprehension of bias

[10] The Claimant does not have an arguable case that the General Division member was biased or that there was a reasonable apprehension of bias. Speculation is insufficient to establish an arguable case.

[11] The Supreme Court of Canada set out the test for a reasonable apprehension of bias. It referred to Grandpré J.'s dissenting opinion in *Committee for Justice and Liberty v National Energy Board*:

⁴ See section 58(1) of the DESD Act.

⁵ See section 58(1)(c) of the DESD Act.

[T]hat test is “what would an informed person, viewing the matter realistically and practically—and having thought the matter through—conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly.”⁶

[12] The Claimant questions the General Division’s impartiality. She says, “I don’t know if it would have made a difference in [its] decision if [her] partner was male, but that is how I feel.”⁷ Apart from this, she does not have anything else to support her claim that the General Division member was biased.

[13] Merely alleging bias does not meet the test set out by the Supreme Court of Canada. Without anything more, it is unlikely that an informed person would think that the General Division member would not decide fairly.

[14] As it is, the General Division comprehensively reviewed and addressed the evidence. For instance, the General Division did not accept the landlord’s letter⁸ as conclusive proof that the Claimant was living in a common-law relationship when she left her employment.

[15] The General Division explained that the Claimant’s early evidence and conflicting information undermined the veracity of her landlord’s letter, as well as her own case overall. The General Division was entitled to draw this conclusion based on the evidence before it. There is no indication that the General Division member did not accept the letter because of the Claimant’s sexual orientation or because she is in a same-sex relationship.

[16] I am not satisfied that there is an arguable case that the General Division member was biased or that there was a reasonable apprehension of bias.

⁶ See *Committee for Justice and Liberty et al. v National Energy Board et al.*, 1976 CanLII 2 (SCC), [1978] 1 SCR 369.

⁷ See Claimant’s additional information sent March 18, 2024, at AD 1B-2.

⁸ See landlord’s letter, at GD 5-2.

The Claimant does not have an arguable case that the General Division made any procedural errors

[17] The Claimant does not have an arguable case that the General Division made any procedural errors.

[18] A procedural error involves the fairness of the process at the General Division. It is not concerned with whether a party feels that the decision is unjust. Parties before the General Division enjoy rights to certain procedural protections, such as the right to be heard, to know the case against them, to receive timely notice of hearings, and the right to an unbiased decision-maker.

[19] Here, the Claimant feels that the process was unfair because she did not know the case against her. As she says that she did not fully know the case against her, she did not collect more evidence to support her case. She says that she had evidence that could have established that she was in a common-law relationship and that she had to move to accompany her partner.

[20] As well, the Claimant says that she provided contact information for her witnesses, so argues that the General Division should have contacted them. It could have verified that she had indeed moved to accompany her partner. That way, it would have been satisfied that she had just cause for leaving her employment.

– The Claimant had to have known the case she had to meet

[21] The Claimant says that she did not know the case that she had to meet. However, from the time that she applied for Employment Insurance benefits, up to the time of the General Division hearing, she had to have known that she had to explain why she left her employment:

- i. The application form asked why the Claimant was no longer working. The Claimant checked the option, "I Quit (includes retirement, health reasons, moving to accompany a spouse or dependent)⁹

⁹ See application form, at GD 3-7.

- ii. The application form also asked the Claimant which reason best describes why she quit, and then listed several options. One of these options was “To follow a spouse/partner, dependent child(ren) or parent(s) to a new residence. The Claimant did not check this option. Instead, she checked, “I quit for another reason”¹⁰ and “For a reason that is not listed above.”¹¹
- iii. The Claimant explained that she left her job “Because the cost of living ... is too high and my rent is increasing and I’m moving out of there to live with family”¹² and “I am offered a job back home...”¹³
- iv. When the Claimant spoke with the Commission, she explained that she quit so she could move to live with family. She also noted that she was unable to meet her living expenses and that rent would have gone up.¹⁴
- v. The Claimant gave a similar explanation when she spoke with the Commission days later. She explained that she moved to live with family because she could not afford to pay the rent anymore and it was going up. Getting a roommate was not an option, as she did not know anyone.¹⁵
- vi. After the Commission turned down her application, she asked it to reconsider its decision. She wrote that she disagreed with the Commission’s decision. She noted that the cost of living was too high, and that she was unable to afford the rising costs of rent and utilities. She wrote, “My partner moved back ... and I went with her, as in rural NL, a little cheaper...”¹⁶
- vii. The Claimant spoke with the Commission again. She did not mention that she quit her employment to accompany her partner. She explained that she

¹⁰ See application form, at GD 3-7 to GD 3-8.

¹¹ See application form, at GD 3-8.

¹² See application form, at GD 3-9.

¹³ See application form, at GD 3-9.

¹⁴ See Supplementary Record of Claim, dated October 6, 2023, at GD 3-22.

¹⁵ See Supplementary Record of Claim, dated October 11, 2023, at GD 3-24.

¹⁶ See Request for Reconsideration, at GD 3-29.

moved because of the cost of living. She moved to be with family, where she paid less rent.¹⁷

- viii. The Claimant provided the Commission with proof of her expenses. This included her landlord's notice dated July 7, 2023, to increase the rent, effective February 1, 2024.¹⁸
- ix. When the Claimant spoke with the Commission on November 9, 2023, the Commission asked the Claimant whether she quit her job to follow her partner. The Commission recorded the following response: "Client said that she needed to move to the rural area ... and moved to her Aunt's house ..., so she can pay \$400 rent and be able to save."¹⁹
- x. During the same conversation, the Commission asked the Claimant whether she had been living with her partner at the time she quit her job, whether they were engaged, whether they had ever shared a common residence, or had any shared responsibilities. The Commission recorded the following response: "Client said that they have not shared a common residence prior as she did not live with her partner ... She was living alone She moved in with her partner ... in September 2023 for the first time... they do not have any shared responsibilities ..."²⁰
- xi. In her Notice of Appeal to the General Division, the Claimant wrote her partner moved in with her in August 2022. Then, her landlord announced a rent increase. Her partner got a full-time position and they could move to a relative's apartment for less rent. So, they decided to move together. She had already secured a part-time job where they would be moving.²¹

¹⁷ See Supplementary Record of Claim, dated November 8, 2023, at GD 3-32.

¹⁸ See Landlord's Notice to Increase Rent, at GD 3-38.

¹⁹ See Supplementary Record of Claim, dated November 9, 2023, at GD 3-40 to 41.

²⁰ See Supplementary Record of Claim, dated November 9, 2023, at GD 3-41.

²¹ See Notice of Appeal, at GD 2-7.

- xii. The Commission filed arguments with the General Division. It addressed the Claimant's arguments that she had moved to accompany her spouse. The Commission argued that the Claimant had provided conflicting information. The Commission argued that the Claimant had failed to prove that she cohabited with her partner prior to leaving her employment. The Commission argued that the Claimant therefore had not proven that she had an obligation to accompany a spouse or common-law partner to another residence.²²

- xiii. The Claimant provided an undated letter from her landlord that the Claimant and S.M. rented the landlord's apartment from September 1, 2022, to August 31, 2023.²³

[22] Given the application form, the Claimant's discussions with the Commission, and the Commission's arguments, the Claimant had to have known that she had to prove that she was living with her partner when she left her employment. The Commission clearly set out this issue in its representations.²⁴ This left the Claimant sufficient time before the General Division hearing to collect whatever evidence was necessary to show that she resided in a common-law relationship with her partner.

[23] Indeed, the Claimant filed a letter from her landlord. The letter stated that the Claimant and S.M. rented an apartment from the landlord from September 1, 2022, to August 31, 2023. This was the only information contained in the letter. The fact that the Claimant went and got this letter shows that she knew that residing in a common-law relationship and whether she quit her job to accompany her partner were at issue.

[24] I am not satisfied that there is an arguable case that the General Division acted unfairly by not ensuring that the Claimant was aware of the case that she had to meet.

²² See Commission's Representations to the Social Security Tribunal – Employment Insurance Section, at GD 4-4.

²³ See landlord's letter, at GD 5-2.

²⁴ See Commission's Representations, at GD 4-4.

– **The General Division does not contact witnesses or collect evidence**

[25] That General Division noted that the Claimant failed to call any witnesses, including her former landlord or her partner, to testify at the hearing. Witnesses could have spoken to the issue about whether the Claimant and her partner had resided together before they moved.

[26] The Claimant argues that the General Division should have contacted her witnesses, including her landlord and her partner.

[27] I am not satisfied that the Claimant has an arguable case on this point. The General Division is an independent and impartial decision-maker. It operates at arm's length from the parties. It does not have any outside contact with any of the parties or any witnesses. It does not collect any evidence. It would have been highly inappropriate for the General Division to contact any witnesses. The responsibility to call witnesses falls on the parties.

[28] I am not satisfied that there is an arguable case that the General Division failed to contact witnesses.

Conclusion

[29] The appeal does not have a reasonable chance of success. Permission to appeal is refused. This means that the appeal will not be going ahead.

Janet Lew
Member, Appeal Division