



Citation: *JZ v Canada Employment Insurance Commission*, 2024 SST 166

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: J. Z.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated September 21, 2023
(GE-23-1352)

Tribunal member: Solange Losier

Decision date: February 21, 2024

File number: AD-23-976

Decision

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

Overview

[2] J. Z. is the Claimant in this case. She applied for Employment Insurance (EI) regular benefits.

[3] The Canada Employment Insurance Commission (Commission) decided that the Claimant voluntarily left her job without just cause.¹ Because of that, she was not entitled to get EI benefits.²

[4] The General Division came to the same conclusion.³ It decided that the Claimant voluntarily left her job without just cause. It found there were reasonable alternatives to leaving.

[5] The Claimant is now asking for permission to appeal the General Division decision to the Appeal Division.⁴ She argues that the General Division made several errors, including that it didn't follow a fair process, made an error of jurisdiction, error of law and an error of fact.

[6] I am denying the Claimant's request for permission to appeal because it has no reasonable chance of success.

Issue

[7] Is there an arguable case that the General Division made a reviewable error?

¹ See reconsideration decision at pages GD3-45 to GD3-46.

² Section 30(1) of the *Employment Insurance Act* (EI Act) disqualifies a Claimant from receiving EI benefits if they voluntarily leave their job without just cause.

³ See General Division decision at pages AD1A-1 to AD1A-18.

⁴ See application to the Appeal Division at pages AD1-1 to AD1-9.

Analysis

[8] An appeal can proceed only if the Appeal Division gives permission to appeal.⁵

[9] I must be satisfied that the appeal has a reasonable chance of success.⁶ This means that there must be some arguable ground upon which the appeal might succeed.⁷

[10] The possible grounds of appeal to the Appeal Division are that the General Division:⁸

- proceeded in a way that was unfair;
- acted beyond its powers or refused to exercise those powers;
- made an error of law;
- based its decision on an important error of fact.

[11] In order to proceed to next steps, the Claimant's appeal has to have a reasonable chance of success.

I am not giving the Claimant permission to appeal

– **The Claimant argues that the General Division made several errors**

[12] The Claimant says that the General Division made several errors.⁹ I have summarized her main arguments about the errors to the Appeal Division as follows:

- The hearing of the General Division was more than unfair.
- The General Division did not allow her to comment on and testify about the fraud, abuse and harassment by Service Canada.

⁵ See section 56(1) of the *Department of Employment and Social Development Act* (DESD Act).

⁶ See section 58(2) of the DESD Act.

⁷ See *Osaj v Canada (Attorney General)*, 2016 FC 115.

⁸ See section 58(1) of the DESD Act.

⁹ See pages AD1-1 to AD1-9.

- The General Division did not inspect the quality of work done by CEIC, even though she submitted evidence of misinformation in their files. It relied mainly on the Commission representation file.
- The General Division said she pressured her employer to amend her *Record of Employment* (ROE), but she had a right to ask.
- The Commission made up a “quit” on her ROE and the General Division relied on it as evidence, despite the fact that she had proven she didn’t quit her job.
- The General Division built a theory that she quit her job after she applied for EI benefits. In doing so, she ignored the amended ROE.
- The General Division decision was based on circumstantial events that it imagined.
- The SST should inspect her case and the work of its colleagues.

– **It is not arguable that the General Division didn’t follow a fair process**

[13] The Claimant says that the General Division was unfair. She says that it did not allow her to comment on and testify about the fraud, abuse and harassment by Service Canada.

[14] The Claimant is essentially arguing that the General Division didn’t follow a fair process. This is a reviewable error that I can consider.¹⁰

[15] The right to a fair hearing before the Tribunal includes certain procedural protections. This includes a right to an unbiased decision maker, the right of a party to know the case against him or her and to be given an opportunity to respond to it.

¹⁰ See section 58(1)(a) of the DESD Act

[16] I listened to the audio recording of the General Division hearing. The hearing was 2 hours and 53 minutes. The Claimant was assisted by an interpreter throughout the hearing.

[17] At the beginning of the hearing, the General Division explained to the Claimant that it would not be addressing the quality of service provided by Service Canada employees.¹¹

[18] The Claimant replied and told the General Division that some of the statements made by Service Canada employees were not true. The General Division confirmed that she could raise that evidence (i.e., untruthful statements) during the hearing, but restated that it would not assess the quality of service she received by Service Canada employees.

[19] The General Division has no authority to address any complaints relating to the service provided by Service Canada employees. It properly focused the hearing on the issues it had to decide. The Claimant was not prevented from testifying during the hearing.

[20] The Claimant wrote in her application forms to the Appeal Division that she has already made a complaint to the *Office of Client Satisfaction* at Service Canada.¹² This is the appropriate organization that reviews and responds to Service Canada's delivery of services.

[21] There is no arguable case that the General Division didn't follow a fair process. The recording reveals the Claimant was given a full and fair hearing.

– **It is not arguable that the General Division made an error of jurisdiction**

[22] An error of jurisdiction means that the General Division didn't decide an issue that it had to decide or decided an issue that it didn't have the authority to decide.¹³

¹¹ Listen to hearing recording at 40:54 to 42:54.

¹² See page AD1-3.

¹³ See section 58(1)(a) of the DESD Act.

[23] The Claimant doesn't explain how the General Division made an error of jurisdiction. Even so, I reviewed the General Division decision to see if there were any errors of jurisdiction made.

[24] The General Division's jurisdiction comes from the Commission's reconsideration decision that is appealed to the Tribunal.¹⁴

[25] In this case, the Commission decided that the Claimant voluntarily left her job without just cause.¹⁵ This resulted in a disqualification to EI benefits.¹⁶

[26] This means that the General Division had to decide whether Claimant voluntarily left her job without just cause.

[27] That is exactly what it did. The General Division decided that the Claimant was disqualified from receiving EI benefits because she voluntarily left her job without just cause.¹⁷ According to the General Division, there were reasonable alternatives to leaving her job.¹⁸

[28] I see no indication that the General Division made an error of jurisdiction. It only decided the issues it was supposed to decide. As well, the General Division did not decide any issues that it had no authority to decide.

[29] There is no arguable case that the General Division made an error of jurisdiction.

– **It is not arguable that the General Division made an error of law**

[30] An error law can happen when the General Division does not apply the correct law or uses the correct law but misunderstands what it means or how to apply it.¹⁹

[31] The Claimant doesn't explain how the General Division made an error of law. Even so, I reviewed the General Division decision to see if there was an error of law.

¹⁴ See sections 112 and 113 of the EI Act.

¹⁵ See Commission's reconsideration decision at pages GD3-45 to GD3-46.

¹⁶ See section 30(1) of the EI Act.

¹⁷ See paragraphs 2, 63, 77, 86 and 104 of the General Division decision.

¹⁸ See paragraphs 93, 96, 99, 100, 101, 102 and 103 of the General Division decision.

¹⁹ See section 58(1)(b) of the DESD Act.

[32] The law says that just cause for voluntarily leaving a job exists if a person had no reasonable alternative to leaving, having regard to all the circumstances.²⁰ One of the circumstances includes if you have a reasonable assurance of another employment in the immediate future.²¹

[33] The General Division stated and applied the correct law in its decision.²² It first assessed whether the Claimant voluntarily left her job. Following that, it assessed whether she had just cause to leave her job having regard to all the circumstances. It considered the Claimant's specific circumstances and whether she had a reasonable assurance of another employment in the immediate future.²³

[34] The General Division ultimately decided that she voluntarily left her job without just cause.²⁴ It said there were reasonable alternatives to leaving her job.²⁵

[35] There is no arguable case that the General Division made an error of law.

– **It is not arguable that the General Division based its decision on an important error of fact**

[36] If 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.”²⁶

[37] A perverse or capricious finding of fact is one where the finding contradicts or isn't supported by the evidence.²⁷ This involves considering the following questions:

- Does the evidence squarely contradict one of the General Division's key findings?

²⁰ See sections 29(c) of the EI Act.

²¹ See section 29(c)(vi) of the EI Act.

²² See paragraphs 65-68 of the General Division decision.

²³ See paragraphs 70, 74 and 86 of the General Division decision.

²⁴ See paragraphs 2, 63, 77, 86 and 104 of the General Division decision.

²⁵ See paragraphs 93, 96, 99, 100, 101, 102 and 103 of the General Division decision.

²⁶ See section 58(1)(c) of the DESD Act.

²⁷ See *Garvey v Canada (Attorney General)*, 2018 FCA 118 at paragraph 6.

- Is there no evidence that could rationally support one of the General Division's key findings?
- Did the General Division overlook critical evidence that contradicts one of its key findings?

[38] First, the Claimant says that the General Division ignored some evidence, specifically the amended ROE. She says that she had a right to ask her employer to amend her ROE.

[39] The General Division knew about the amended ROE. It acknowledged the Claimant's argument that the employer made a mistake on the original ROE when it wrote that she "quit." She wanted the amended ROE to be considered instead because it reflected a "shortage or work/end of contract or season."²⁸

[40] The General Division found evidence that the employer told the Commission that the ROE was amended because the Claimant asked them to change it.²⁹

[41] However, the General Division decided that it was not bound by how the employer and employee characterized the separation.³⁰ It found that there wasn't a shortage of work and she wasn't laid off from her job.³¹ It provided reasons for making that finding including that the employer on a few occasions afterwards was able to offer some weekend work and that it was the Claimant who told the employer she could no longer work full-time.³² Ultimately, it decided that she quit her job and voluntarily put herself in the position she was in.³³

[42] The General Division did not ignore the amended ROE. It simply didn't agree with the Claimant's position based on its overall assessment of the evidence.

²⁸ See paragraphs 31-32 of the General Division decision.

²⁹ See paragraph 33 of the General Division decision.

³⁰ See paragraph 34 of the General Division decision.

³¹ See paragraph 35 of the General Division decision.

³² See paragraphs 36-38 of the General Division decision.

³³ See paragraphs 61-63 of the General Division decision.

[43] Second, the Claimant argues that the General Division relied mainly on the Commission's representation file. She says that it did not inspect the work done by Commission agents, even though she submitted evidence of misinformation in their files.

[44] The Claimant may not agree with how the General Division assessed the evidence, but that is not a ground of appeal permitted under the law.³⁴ The General Division is the fact finder and it was free to weigh the evidence. So, I cannot intervene in the General Division's conclusion where it applies settled law to the facts.³⁵

[45] Third, the Claimant argues that the General Division's decision was based on circumstantial events that it imagined. It built a theory that she quit her job after she applied for EI benefits.

[46] The General Division found as fact that the Claimant's separation from her job didn't happen until after November 25, 2022. It said that the date of separation occurred after she applied for EI benefits on December 10, 2022. So, it decided that she didn't leave one job to go to another.³⁶

[47] The General Division's key findings are consistent with the evidence on the record. It explained why it made the findings it did.

[48] An appeal to the Appeal Division of the Tribunal is not a new hearing in order to get a different outcome.

[49] There is no arguable case that the General Division made any important errors of fact.

³⁴ See section 58(1) of the DESD Act.

³⁵ See *Garvey v Canada (Attorney General)*, 2018 FCA 118.

³⁶ See paragraph 77 of the General Division decision.

Conclusion

[50] I reviewed the file, listened to the audio recording and examined the General Division decision.³⁷ The General Division followed a fair process and only decided the issues it was allowed to decide. It stated and applied the law correctly. I found no evidence that it made any important errors of fact. It did not ignore or misunderstood any key evidence.

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

Solange Losier
Member, Appeal Division

³⁷ The Federal Court has said that I should do a review like this in decisions like *Griffin v Canada (Attorney General)*, 2016 FC 874 and *Karadeolian v Canada (Attorney General)*, 2016 FC 615.