Citation: *FG v Canada Employment Insurance Commission*, 2024 SST 432

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	F. G.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated April 7, 2024 (GE-24-328)

Tribunal member:	Pierre Lafontaine
Decision date:	April 25, 2024
File number:	AD-24-272

Decision

[1] Leave to appeal is refused. This means the appeal will not proceed.

Overview

[2] The Applicant (Claimant) submitted an initial application for regular EI benefits. He reported that he quit his job on November 17, 2023, and he was not available for full-time work because he was starting school in January 2024. He said he was only available to work part-time.

[3] The Commission decided that the Claimant was disentitled from receiving benefits as of November 19, 2023. Based on his *Record of Employment*, the disentitlement for non-availability was later changed to December 18, 2023. The Commission determined he wasn't available for work while attending school because he was limiting himself to part-time work.

[4] The Commission also looked at the reasons why the Claimant stopped working. The Commission decided that he voluntarily left his job without just cause. The Commission imposed a disqualification starting December 17, 2023, the start date of the benefit period.

[5] The Claimant appealed to the General Division of the Tribunal.

[6] The General Division found that the Claimant decided not to go back to school and started looking for full-time work. It found that the Claimant did not prove his availability for work from November 20, 2023 to January 9, 2024. The General Division further found that he voluntarily left his job. It found that the Claimant had reasonable alternatives to leaving when he did. The General Division concluded that he did not have just cause to leave his job under the law.

[7] The Claimant now seeks leave to appeal the General Division's decision to the Appeal Division. He submits that the General Division made errors in fact and in law when it concluded that he did not have just cause to leave his job.

[8] I must decide whether there is some reviewable error of the General Division upon which the appeal might succeed.

[9] I am refusing leave to appeal because the Claimant's appeal has no reasonable chance of success.

Issue

[10] Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

Analysis

[11] The law specifies the only grounds of appeal of a General Division decision.[1] These reviewable errors are that:

1. The General Division hearing process was not fair in some way.
2. The General Division did not decide an issue that it should have decided. Or, it decided something it did not have the power to decide.
3. The General Division based its decision on an important error of fact.
4. The General Division made an error of law when making its decision.

[12] An application for leave to appeal is a preliminary step to a hearing on the merits. It is an initial hurdle for the Claimant to meet, but it is lower than the one that must be met on the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove his case but must establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, that there is arguably some reviewable error upon which the appeal might succeed.

[1] Section 58(1) of the *Department of Employment and Social Development Act*.

[13] Therefore, before I can grant leave, I need to be satisfied that the reasons for appeal fall within any of the above-mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success.

Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

[14] The Claimant submits that the General Division did not provide an explanation as to why it did not consider the fact that he was punished for wanting to go for lunch while held up because of operational errors made by the dispatcher. He submits that this practice is against the law.

[15] The Claimant submits that the General Division made an error when it determined he left his job because his request for a shift change wasn't granted and not because of the grievance settlement and resignation letter he signed after the agreement. He submits that almost nothing about his claims about the dispatcher or being punished for wanting to go for lunch was addressed during the hearing.

[16] The General Division had to determine whether the Claimant had just cause to voluntarily leave his employment. This must be determined **at the time he left**.

[17] Whether one had just cause to voluntarily leave an employment depends on whether they had no reasonable alternative to leaving having regard to all the circumstances.

[18] The General Division found that the Claimant voluntarily left his job.

[19] The General Division determined that the Claimant requested a work schedule change on November 15, 2023. The request states that he is asking for the change in workdays because he is working elsewhere and taking courses at school.[2]

[2] See page GD3B-33.

[20] The General Division considered that in his submissions to the Tribunal, the Claimant said he asked for a change in schedule so he didn't have to work with the dispatcher who had told him he couldn't go for lunch.

[21] The General Division considered the Claimant's evidence but gave more weight to the initial written statement he made in his request for a schedule change.

[22] The employer also confirmed that the Claimant quit because they wouldn't accommodate his request for part-time hours on specific days. To prove this, the employer provided a copy of text messages which show that at 11:39 a.m., they sent a text to the Claimant saying they couldn't accommodate his shift change request. Later that day, at 2:44 p.m., the Claimant replied that he will write his letter of resignation.[3] The fact that the Claimant later negotiated the terms of his resignation letter does not change the fact that he quit after the employer refused to change his work schedule.

[23] I also note that on December 14, 2023, after he quit his job, the Claimant declared to the Commission that he was only looking for part-time work because he was starting school in January.[4]

[24] The Claimant submits that when he submitted his request, he had no other job or school. Therefore, the General Division made an error when it determined it was the reason he quit. However, he testified before the General Division that **when he quit** his job on November 17, 2023, **he thought he might go back to school** in January 2024. Then he learned on December 27, 2023, that his EI benefits were denied. So, he decided not to go back to school.

[25] It is settled law that voluntarily leaving one's employment to undertake studies does not constitute "just cause" under the *Employment Insurance Act*.[5]

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[3] See page GD3B-39.
[4] See GD3A-16.
[5] *Canada (Attorney General) v King*, 2011 FCA 29; *Canada (Attorney General) v Macleod*, 2010 FCA 301; *Canada (Attorney General) v Beaulieu*, 2008 FCA 133; *Canada (Attorney General) v Caron*, 2007 FCA 204; *Canada (Attorney General) v Côté*, 2006 FCA 219; *Canada (Attorney General) v Bois*, 2001 FCA 175.

[26] The General Division was not convinced that the Claimant experienced antagonism from a supervisor. It found that it was the Claimant's behaviour that was primarily responsible for the way his supervisor(s) and manager responded. It based this finding on the Claimant's behavior who admitted he was late, asked to leave early, didn't follow proper procedures, and safety protocols.

[27] The General Division determined that the Claimant did not meet the legal test for harassment.

[28] Before the General Division, the Claimant said that he was being harassed because his employer was issuing him warnings and suspensions. He also didn't like it when his coworker said he was being salty or when the dispatcher assigned him a job at a time that he wanted to go for lunch.

[29] The employer exercising its management rights and asking that the Claimant stop arguing with his coworker and to perform a new task while he was on his phone prior to his lunch break, or the employer applying its discipline procedures, does not constitute a practice contrary to law or harassment under the law.[6]

[30] The General Division found that the Claimant had reasonable alternatives to leaving when he did.

[31] The General Division determined that a reasonable alternative would have been for the Claimant to change his own behaviours and follow the employer's policies and procedures, to eliminate conflicts and further warnings or suspensions.

[32] The General Division determined that another reasonable alternative would have been for the Claimant to remain employed during that process, while the union helped to address his issues with the workplace. The evidence presented does not support a

[6] See GD3-B-27, GD3B-55: When asked why he did not take the work and finish it after break, the Claimant responded he was already on something. The employer confirmed that the Claimant said to his dispatcher he was already doing something while he was on his phone in the dock office.

conclusion that the Claimant's working conditions were intolerable to the point that he had to leave when he did.

[33] The factual findings of the General Division are supported by the evidence. I see no reviewable error made by the General Division in its application of the law and case law related to voluntary leaving.

[34] I also see no violation of a principle of natural justice. The Claimant presented in detail his case to the General Division, in writing and orally. At the conclusion of the hearing that lasted one hour and a half, the Claimant was given one last opportunity to complete his evidence. The Claimant stated that he did not want to repeat what he had already said in his written representations.[7]

[35] I am of the view that the Claimant's application for leave is more akin to a request for reassessment of the evidence. It is not the role of the Appeal Division to reassess the evidence.

[36] By choosing to leave his employment, the Claimant disqualified himself from receiving EI benefits. He had the option to retain his employment and contest his working conditions with his union's assistance. It must be kept in mind that the primary objective of the EI Act is to compensate claimants who involuntarily lost their employment.

[37] In his application for leave to appeal, the Claimant has not identified any reviewable errors such as jurisdiction or any failure by the General Division to observe a principle of natural justice. He has not identified errors in law nor identified any erroneous findings of fact, which the General Division may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision.

[38] For the above-mentioned reasons and after reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Claimant in

[7] At 1:17:52 of the recording of the General Division hearing.

support of his request for leave to appeal, I find that the appeal has no reasonable chance of success.

Conclusion

[39] Leave to appeal is refused. This means the appeal will not proceed.

Pierre Lafontaine
Member, Appeal Division