



Citation: *LD v Canada Employment Insurance Commission*, 2024 SST 451

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: L. D.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated March 4, 2024
(GE-23-3537)

Tribunal member: Janet Lew

Decision date: April 30, 2024

File number: AD-24-251

Decision

[1] Leave (permission) to appeal is refused. The appeal will not be going ahead.

Overview

[2] The Applicant, L. D. (Claimant), is seeking leave to appeal the General Division decision. The General Division found that the Claimant had voluntarily left her employment. The General Division also found that the Claimant had not shown that she had just cause for leaving her job when she did. It found that the Claimant had reasonable alternatives to leaving her job. This meant that the Claimant was disqualified from receiving Employment Insurance benefits.

[3] The Claimant denies that she voluntarily left her employment. She argues that the General Division made an important factual error without regard for the evidence before it. She says that the evidence shows that her employer terminated her due to a lack of work.

[4] 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.¹ If the appeal does not have a reasonable chance of success, this ends the matter.²

[5] 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.

Issue

[6] Is there an arguable case that the General Division made an important factual error when it found that the Claimant had voluntarily left her employment?

¹ See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

² 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.”

I am not giving the Claimant permission to appeal

[7] 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.³

[8] For these types of factual errors, 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.

There Claimant does not have an arguable case that the General Division made a factual error

[9] The Claimant does not have an arguable case that the General Division made a factual error. The General Division was entitled to make the findings of fact that it did, as there was evidence that supported its findings, and as it explained why it preferred that evidence over the conflicting evidence of the Claimant.

[10] The General Division acknowledged the Claimant's arguments that there was a shortage of work and that this was the reason that she was no longer working. The General Division accepted the Claimant's testimony that she was not getting many hours of work.⁴

[11] Although the General Division accepted that the Claimant's employer was not giving her much work, it found that she had voluntarily left her job, for the following reasons:

- Her employer offered her a 30-day leave of absence, which she declined and
- The Claimant testified that her employer regularly communicated with her to see if her car had been fixed.

³ See section 58(1) of the DESD Act.

⁴ See General Division decision, at para 12.

[12] The General Division found that the fact that the Claimant's employer regularly asked whether her car had been fixed suggested that there was work available. In other words, if the Claimant had a feasible way to get around to client sites, her employer would have assigned her more work.

[13] The employer had provided a letter saying that it had dismissed the Claimant because of a shortage of work. However, the General Division rejected the truthfulness of this letter. It found that there was conflicting information from the employer, in that the employer kept asking the Claimant about whether her car was fixed. The General Division also found that the employer also stated that it had only issued the letter that said there was a shortage of work because the Claimant had pressured it to provide this letter.⁵

[14] The evidence is as follows:

- Record of Employment dated August 4 and 29, 2023 recorded the reason for the separation as a shortage of work⁶
- Employer reportedly told the Respondent, the Canada Employment Insurance Commission (Commission) that it refused the Claimant's request for a layoff, as it still had work for her.⁷
- Employer reportedly told the Commission that the Claimant's separation should be considered a "quit" as she was unwilling to accept shifts and requested a layoff. In the same conversation, the employer reportedly said that the Claimant had refused all work and asked to be removed from the schedule while she looked for another vehicle.⁸

⁵ See General Division decision, at paras 28 to 30.

⁶ See Records of Employment, at GD 3-16 and GD 3-18.

⁷ See Supplementary Record of Claim, dated August 29, 2023, at GD 3-21.

⁸ See Supplementary Record of Claim, dated September 6, 2023, at GD 3-22 to 23.

- Claimant wrote to her employer, asking to be laid off as she was no longer able to work as a community personal support worker without a car.⁹ The General Division noted that it did not consider this evidence.¹⁰ It had not questioned her about her letter.
- The employer offered to place the Claimant on a leave of absence for 30 days, in response to her request that it code the Record of Employment as a shortage of work.¹¹
- The employer prepared a letter dismissing the Claimant from her employment. The employer confirmed that the Claimant's employment was "terminated without cause; due to a shortage of work, effective immediately."¹²
- The employer later wrote to the Claimant advising that it had terminated the Claimant from her employment based on her request, "not because [it] wished to terminate [her]."¹³
- The Claimant reportedly told the Commission that her employer had called her every day, enquiring about her ability to work, and asking if her vehicle was repaired. The Claimant stated that the employer never placed any work in her schedule. She turned down work if she was unable to get to the worksites.¹⁴
- The employer reportedly told the Commission that they tried to accommodate the Claimant's transportation issues. The employer offered her work, which she refused. She also turned down the employer's offer of a leave of absence and demanded a layoff.

⁹ See Claimant's email dated June 23, 2023, at GD 3-27.

¹⁰ See General Division decision, at paras 26 and 27.

¹¹ See exchange of email between the Claimant and her employer, on July 14, 2023, at GD 3-30.

¹² See employer's dismissal letter dated July 17, 2023, at GD 3-31 to 33 (and also at GD 3-34 to 36 / GD 3-48 to 50).

¹³ See exchange of email between the Claimant and her employer, on August 4, 2023, at GD 3-31.

¹⁴ See Supplementary Record of Claim, dated September 12, 2023, at GD 3-37.

In hindsight, the employer said that it should not have agreed to the Claimant's demands to terminate her based on a shortage of work. But the employer did so, viewing it as an opportunity to "quietly make [the Claimant] go away and stop causing issues." The employer denied there was any shortage of work. The employer wanted the Record of Employment amended to show that the separation was due to the Claimant quitting, rather than there being a shortage of work.¹⁵

- The Claimant told the Commission that she had not sought nor accepted her employer's offer of a leave of absence. She also stated that her employer had not given her any work so after 20 days, she asked her employer to lay her off. She denied that she ever refused any work. She also stated that she did everything to get viable transportation.¹⁶
- The Claimant explained why her employer did not lay her off due to a shortage of work. If it had done this, it would not have been able to hire anyone.¹⁷ (It does not seem to make much sense for an employer to hire anyone if there truly was a shortage of work.)
- The Claimant denied that she quit her job. She stated that her employer did not give her any work. She said that it offered her jobs that were along bus routes, but these jobs were not placed in her schedule.¹⁸

[15] Clearly, there was conflicting evidence. On the one hand, the Claimant said that her employer never scheduled her for any work, while the employer stated that the Claimant refused work.

[16] The Claimant also said her employer terminated her due to a shortage of work. This was confirmed by the employer's letter of dismissal, dated July 17, 2023. However, the employer subsequently stated that it had dismissed the Claimant in response to

¹⁵ See Supplementary Record of Claim, dated September 12, 2023, ad GD 3-39 to 3-40.

¹⁶ See Supplementary Record of Claim, dated September 12, 2023, ad GD 3-41.

¹⁷ See Claimant's Request for Reconsideration, at GD 3-44 to 45.

¹⁸ See Supplementary Record of Claim, dated October 25, 2023, ad GD 3-55.

pressure from her. Otherwise, the employer stated that there was no shortage of work. Indeed, it did not wish to terminate the Claimant's employment. It wanted the Commission to amend the Record of Employment to show that the Claimant quit her employment.

[17] The General Division did not overlook or misconstrue any of the Claimant's evidence that her employer had dismissed her due to a shortage of work. It referred to this evidence. However, the General Division did not accept this evidence. After analyzing and weighing the evidence, it simply preferred the employer's evidence.

[18] The General Division justified why it accepted some of the evidence, while rejecting other evidence. The General Division was entitled to draw the conclusions it did, as there was evidence that reasonably supported its findings, and as it explained its decision.

[19] Essentially, the Claimant is seeking a reassessment and asking me to come to a different conclusion from the one that the General Division member made on this particular issue. But, as the Federal Court said in a case called *Tracey*,¹⁹ in an application for leave to appeal (in Employment Insurance matters), the Appeal Division has a limited role. According to the Federal Court, the Appeal Division has to determine whether the appeal has a reasonable chance of success. It does not reassess evidence or reweigh the factors considered by the General Division in order to reach a different conclusion.

[20] This was recently confirmed by the Federal Court of Appeal in *Milner*, where it said that the Appeal Division is not to review and reassess the evidence.²⁰ The law does not allow me to conduct a reassessment, even if the evidence could just have reasonably led to another conclusion from the one at which the General Division ultimately arrived.

¹⁹ See *Tracey v Canada (Attorney General)*, 2015 FC 1300 at para 46.

²⁰ See *Milner v Canada (Attorney General)*, 2024 FCA 4.

[21] The Claimant does not have an arguable case that the General Division made a factual error.

Conclusion

[22] 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. The Claimant remains disqualified from receiving Employment Insurance benefits.

Janet Lew
Member, Appeal Division