



Citation: *PS v Canada Employment Insurance Commission*, 2024 SST 357

**Social Security Tribunal of Canada
Appeal Division**

Leave to Appeal Decision

Applicant: P. S.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated February 29, 2024
(GE-24-225)

Tribunal member: Stephen Bergen

Decision date: **April 11, 2024**

File number: AD-24-182

Decision

[1] I am refusing leave (permission) to appeal. The appeal will not proceed.

Overview

[2] P. S. is the Applicant. I will call him the Claimant because this application is about his claim for Employment Insurance (EI) benefits.

[3] The Claimant quit his job in May 2023. He gave a number of reasons. These initially focused on problems arising from a long-standing knee injury, his loss of transportation, and his desire to be retrained in a different field. He later told the Commission that he had also experienced bullying and harassment from co-workers, and had mental health issues.

[4] The Respondent, the Canada Employment Insurance Commission (Commission), denied his claim for regular benefits. It found that he did not have just cause for leaving his employment because he had reasonable alternatives to leaving. When the Claimant asked it to reconsider, it would not change its decision.

[5] The Claimant appealed to the General Division of the Social Security Tribunal, but the General Division dismissed his appeal. He is now asking for permission to appeal to the Appeal Division.

[6] I am refusing permission to appeal. The Claimant has not made out an arguable case that the General Division made an important error of fact.

Issue

[7] Is there an arguable case that the General Division made an important error of fact by overlooking or misunderstanding evidence that the Claimant lost his job due to sickness and injury?

I am not giving the Claimant permission to appeal

General Principles

[8] For the Claimant's application for leave to appeal to succeed, his reasons for appealing would have to fit within the "grounds of appeal." The grounds of appeal identify the kinds of errors that I can consider.

[9] I may consider only the following errors:

- a) The General Division hearing process was not fair in some way.
- b) 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 (error of jurisdiction).
- c) The General Division based its decision on an important error of fact.
- d) The General Division made an error of law when making its decision.¹

[10] To grant this application for leave and permit the appeal process to move forward, I must find that there is a reasonable chance of success on one or more grounds of appeal. Other court decisions have equated a reasonable chance of success to an "arguable case."²

Important error of fact

[11] There is no arguable case that the General Division made an important error of fact.

[12] For the purpose of an application to the Appeal Division, an important error of fact is where the General Division bases its decision on a finding of fact that overlooks or misunderstands relevant evidence, or on a finding that does not rationally follow from the evidence.³

¹ This is a plain-language version of the grounds of appeal. The full text is in section 58(1) of the *Department of Employment and Social Development Act* (DESDA).

² See *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; and *Ingram v Canada (Attorney General)*, 2017 FC 259.

³ Section 58(1)(c) of the EI Act describes the error more precisely. It says that it is where, "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."

[13] The Claimant's appeal was about his application for regular benefits; not his application for sickness benefits. The General Division could only allow the Claimant's appeal if it decided that he had "just cause" for leaving his employment. That decision depended on whether the Claimant had no reasonable alternative to leaving, in light of all the circumstances.⁴

[14] The General Division found that the Claimant had a reasonable alternative to leaving, despite his injury and sickness. It said that the Claimant could have asked his employer for a sick leave. It noted that the Claimant acknowledged that his employer might have granted him a sick leave if he had thought to ask, but that the Claimant didn't want to stay at that point.⁵

[15] There is no arguable case that the General Division ignored or misunderstood the evidence of the Claimant's injury and sickness. It recognized that the Claimant was experiencing knee problems and that the Claimant said he had undiagnosed mental health issues as well.⁶ It took note of his testimony that his knee injury was part of the reason he quit, that he "blew out" his knee, and that he had been off work for about a week due to his knee and had called in sick.⁷ It referred to the medical notes and certificates that were before it, and observed that the most recent of those stated that the Claimant was unable to work until December 15, 2023 (several months after he quit).⁸

[16] The Claimant suggests that he has a document that can prove he would still have his job if he had not been sick or injured.⁹ If he is referring to new evidence that was not before the General Division, the Appeal Division cannot consider it.¹⁰

⁴ See section 29(c) of the *Employment Insurance Act* (EI Act).

⁵ See paras 27 and 29 of the General Division decision. Also listen to the audio recording of the General Division decision at timestamp 43:35.

⁶ See para 26 of the General Division decision. Also listen to the audio recording of the General Division decision at timestamp 28:50.

⁷ See para 25 of the General Division decision.

⁸ See para 28 of the General Division decision.

⁹ See AD1-5.

¹⁰ *El Haddadi v. Canada (Attorney General)*, 2016 FC 482; *Mette v. Canada (Attorney General)*, 2016 FCA 276.

[17] He may believe that his appeal to the Appeal Division is an opportunity to re-argue his case, but that is incorrect. The Appeal Division is only authorized to consider the specific errors described earlier in this decision. It cannot reach a different conclusion by reweighing the evidence that was before the General Division.¹¹

– **Review for other errors of fact**

[18] I appreciate that the Claimant is unrepresented. He may not have understood precisely what he should argue. Therefore, I searched the record for other relevant evidence that the General Division may have ignored or misunderstood.¹²

[19] Unfortunately for the Claimant, the record does not support an argument that the General Division may have made an important error of fact. The General Division considered the circumstances suggested by the evidence and did not ignore or misunderstand any evidence related to those circumstances. Its finding that the Claimant had reasonable alternatives to leaving follows rationally from the evidence that was available to it.

Conclusion

[20] I am refusing permission to appeal. This means that the appeal will not proceed.

Stephen Bergen
Member, Appeal Division

¹¹See, for example: *Hideq v Canada (Attorney General)*, 2017 FC 439, *Parchment v Canada (Attorney General)*, 2017 FC 354, *Johnson v Canada (Attorney General)*, 2016 FC 1254, *Marcia v Canada (Attorney General)*, 2016 FC 1367.

¹² I am following the lead of the Federal Court in decision such as *Karadeolian v. Canada (Attorney General)*, 2016 FC 615.