



Citation: *MH v Canada Employment Insurance Commission*, 2024 SST 476

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: M. H.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated March 11, 2024
(GE-24-150)

Tribunal member: Pierre Lafontaine

Decision date: May 6, 2024

File number: AD-24-277

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. The Respondent (Commission) looked at the Claimant's reasons for leaving his job at X. It decided that he voluntarily left (or chose to quit) his job without just cause, so it couldn't pay him benefits. After an unsuccessful reconsideration, the Claimant appealed to the General Division of the Tribunal.

[3] The General Division found that the Claimant 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.

[4] The Claimant now seeks leave to appeal of 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.

[5] I must decide whether there is some reviewable error of the General Division upon which the appeal might succeed. I am refusing leave to appeal because the Claimant's appeal has no reasonable chance of success.

Issue

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

Preliminary matters

[7] It is well established that I must decide the present application based on the evidence that was presented to the General Division.

Analysis

[8] 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.

[9] 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.

[10] 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?

[11] In support of his application for leave to appeal, the Claimant essentially reiterates that he was promoted to the position of Team Lead, but his employer never gave him an employment contract or a job description despite his requesting them. He also says he was discriminated against, pointing to fact that he was passed over for promotion. And further, he submits, he was consistently required to work alone on a

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

production line, though the work should have been done (and in the evening shift was done) by a three-person team. He submits that he had no reasonable alternative to leaving at that time he did as his employer was letting this unacceptable situation continue.

[12] 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.

[13] 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.

[14] The General Division found that the Claimant voluntary left his job. He gave his employer a two-week notice, as per his contract of employment. It determined that the Claimant requested by email a copy of the job description of Team Lead on January 19, 2023. In this email, he acknowledged having received the job description at a meeting but having misplaced it.

[15] The evidence shows that the Claimant requested on January 19, 2023, the job/profiles descriptions for Supervisor and Team Lead. He acknowledged having received physical copies during an H&S meeting but said he had misplaced them.² He resigned before the deadline set by his employer to follow-up on his request.

[16] The General Division determined that the Claimant was given a pay increase. It noted that the Claimant may not have agreed with the employer's decisions about whom to promote, but it was the employer's prerogative to make those promotion decisions provided the employer did so lawfully.

[17] The General Division noted that although there was some unfairness between the division of labour between a.m. and p.m., the employer tried to resolve the issue by hiring an additional employee in December.

² See GD2-12.

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

[19] A reasonable alternative would have been for the Claimant to wait and see if the division of labour was still an issue after December, and to raise it with upper management, if it still was. Another reasonable alternative would have been to continue working while looking for full-time employment.³

[20] The evidence presented does not support a conclusion that the Claimant's working conditions were intolerable to the point that he had to leave when he did. The fact that the Claimant attempted to reapply for a position with the company in May 2023, a few months after resigning, contradicts his attestation of his workplace being intolerable.

[21] 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.

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

[23] By choosing to leave his employment, the Claimant disqualified himself from receiving employment insurance benefits. He had the option to retain his employment and look for work. It must be kept in mind that the primary objective of the EI Act is to compensate claimants who involuntarily lost their employment.

[24] 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.

³ See GD3-15, the claimant indicated he did not look for full-time work prior to quitting his job.

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

Conclusion

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

Pierre Lafontaine
Member, Appeal Division