Citation: *RV v Canada Employment Insurance Commission*, 2024 SST 601

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	R. V.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated February 14, 2024 (GE-23-1564)

Tribunal member:	Elizabeth Usprich
Decision date:	May 27, 2024
File number:	AD-24-227

Decision

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

Overview

[2] R. V. is the Applicant. He voluntarily left his job on August 26, 2022. This isn't disputed.

[3] The Canada Employment Insurance Commission (Commission) decided the Applicant didn't have "just cause" to leave his job, so he wasn't entitled to any Employment Insurance (EI) benefits.

[4] The Applicant appealed to the Social Security Tribunal (Tribunal) General Division. The General Division also decided that the Applicant didn't have just cause because he had reasonable alternatives to quitting.

[5] The Applicant has now appealed to the Tribunal's Appeal Division.

[6] I am denying the Applicant's request for permission to appeal because there is no reasonable chance of success.

Preliminary matters

– **No explanation or reasons given for how the General Division made an error**

[7] The Applicant's Application to the Appeal Division contained no reasons for the appeal.[1] The Applicant checked the box that says, "The General Division made an important error of fact".[2] There is space below which instructs an applicant to give "specific examples" of how the General Division made an error. This area is blank.

[8] In order to better understand the Applicant's position, a Request for Additional Information was sent on April 25, 2024. This letter gave the Applicant until May 8, 2024,

[1] See AD1-2 to AD1-7.
[2] See AD1-3.

to provide additional information about the reasons for his appeal. As of the date of issuance of this decision, no response has been received.

– **The Applicant appears to be providing new evidence which can't be accepted**

[9] The Applicant provided a medical note dated March 18, 2024.[3] This note is dated after the General Division decision was issued on February 14, 2024.

[10] The Appeal Division can't consider new evidence unless it falls under an exception.[4] None of the exceptions to the general rule apply in this situation. There was no argument put forward about how the doctor's note would fall under an exception for allowing new evidence. It seems after the Applicant received the General Division's decision, he went to his doctor in an effort to close a gap in his evidence that he provided to the General Division.[5]

[11] My role is to look at the information the General Division had, and decide if it made an error based on **that** information. So, the General Division can't be found to have made an error based on information it never had.

[12] I don't find this meets an exception for new evidence. This means that I am not considering this evidence as I find it is new evidence. I can only consider the evidence that was before the General Division.

Issue

[13] Is there an arguable case that the General Division made an important error of fact in its decision?

I am not giving the Applicant permission to appeal

[14] An appeal can only go ahead if the Appeal Division gives an applicant permission to appeal.[6] I have to be satisfied that the appeal has a reasonable chance of success.[7]

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[3] See AD1-8.
[4] See *Sibbald v Canada (Attorney General)*, 2022 FCA 157 at paragraph 37.
[5] See the General Division decision at paragraph 5.
[6] See section 56(1) of the Department of *Employment and Social Development Act* (DESD Act).
[7] See section 58(2) of the DESD Act.

It has to be shown that there is an arguable ground upon which the appeal might succeed.[8]

[15] There are only certain grounds of appeal that the Appeal Division can consider.[9] Briefly, it has to be shown that the General Division did one of the following:

- acted unfairly in some way;
- decided an issue it should not have, or didn't decide an issue it should have;[10]
- made an error of law; or
- based its decision on an important error of fact.

[16] So, for the Applicant's appeal to go ahead, I have to find there is a reasonable chance of success on any one of those grounds.

[17] The Applicant says the General Division made an important error of fact. There are no specifics that were given about the error. It appears the Applicant may be providing a doctor's note to refute the General Division's decision that he had a reasonable alternative to quitting.

I am not giving the Applicant permission to appeal

[18] There is no arguable case that the General Division made an important error of fact. The General Division didn't have the doctor's note before it. The doctor's note is dated after the General Division's decision.

[19] This means that the General Division didn't ignore the evidence because it didn't have it.

[20] The General Division accepted the Applicant's and the Commission's position that the Applicant voluntarily left his job.[11] The General Division set out the correct legal

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[8] See *Osaj v Canada (Attorney General)*, 2016 FC 115 at paragraph 12.
[9] See section 58(1) of the DESD Act.
[10] This is also known as an error of jurisdiction.
[11] See the General Division decision at paragraph 9.

test.[12] The *Employment Insurance Act* (EI Act) says a claimant has "just cause" for leaving their work, if they had no reasonable alternative to leaving, having regard to "all the circumstances".[13]

[21] This means the General Division had to look at all the circumstances that existed at the time the Applicant quit. Then the Applicant had to show he had no reasonable alternative but to leave his job.

[22] The General Division found several circumstances existed when the Applicant left his job.[14] The General Division then considered whether the Applicant had no reasonable alternative but to quit.[15]

[23] The General Division found the Applicant had reasonable alternatives.[16] There were several reasonable alternatives noted. One of them was that the Applicant could have gotten medical documentation to provide to his employer so accommodations might have been considered.[17] It may be because of this that the Applicant is now trying to produce new evidence.

[24] As mentioned, I cannot consider new evidence. The legal test under the EI Act requires that the Claimant have "no reasonable alternative". So, if there is one reasonable alternative that means the Claimant didn't have just cause for leaving.

[25] In addition to the getting medical documentation, the General Division also said the Applicant could have spoken to his boss about other positions in the company. So, this was still a reasonable alternative.

[26] The General Division also says the Applicant could have spoken to his Human Resources department about his team leader. This was also a reasonable alternative.

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[12] See the General Division decision at paragraphs 11 to 15.
[13] See section 29(c) of the *Employment Insurance Act* (EI Act).
[14] See the General Division decision at paragraph 24.
[15] See the General Division decision at paragraph 25.
[16] See the General Division decision at paragraph 28 and paragraphs 29 to 31 for the specific reasonable alternatives.
[17] See the General Division decision at paragraph 31.

[27] This means the General Division wrote about several reasonable alternatives. So, I don't find there was an important error of fact that it made about the Applicant seeking medical documentation.

– **There are no additional errors in the General Division decision**

[28] I have reviewed the file and looked at the decision the Applicant is appealing. I have not found any other error that the General Division may have made.[18]

Conclusion

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

Elizabeth Usprich
Member, Appeal Division

[18] See *Karadeolian v Canada (Attorney General)*, 2016 FC 615 which suggests that doing such a review is recommended.