



[TRANSLATION]

Citation: *SA v Canada Employment Insurance Commission*, 2024 SST 625

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: S. A.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated
May 14, 2024 (GE-24-961)

Tribunal member: Pierre Lafontaine

Decision date: June 3, 2024

File number: AD-24-359

Decision

[1] Permission to appeal is refused. The appeal will not proceed.

Overview

[2] The Applicant's (Claimant) job ended. The Respondent (Commission) determined that the Claimant did not have just cause for voluntarily leaving his job with the employer. The Claimant says that he was let go. He suggested to his employer that he work part-time, which would have allowed him to accept another part-time job, but his employer refused. After a request for reconsideration, the Commission upheld the original decision. The Claimant appealed to the General Division.

[3] The General Division found that the Claimant sent a letter to his employer on December 4, 2023, saying that he wanted to work part-time or that he was going to resign. Because he was not happy at work, the parties agreed on December 5, 2023, that he would look for another job. The General Division found that the Claimant had reasonable alternatives to leaving when he did. He could have stayed at his job until the end of his employment contract, which was ending three months later. He could also have made sure that he had another job in the immediate future before leaving his job or asked for unpaid leave from his employer.

[4] The Claimant is now seeking permission to appeal the General Division's decision to the Appeal Division. He is reiterating his position that he was let go on December 5 by his employer and that he did not leave his job voluntarily.

[5] I have to decide whether there is an arguable case that the General Division made a reviewable error based on which the appeal has a reasonable chance of success.

[6] I am refusing permission to appeal because the Claimant has not raised a ground of appeal based on which the appeal has a reasonable chance of success.

Issue

[7] Does the Claimant's appeal have reasonable chance of success based on a reviewable error the General Division may have made?

Preliminary remarks

[8] It is well established that the Appeal Division does not accept new evidence. I must decide this application considering only the evidence presented to the General Division. The powers of the Appeal Division are limited by the law.¹

Analysis

[9] The law specifies the only grounds of appeal of a General Division decision.² These reviewable errors are the following:

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 not decided something it did not have the power to decide.
3. The General Division based its decision on an error of fact important.
4. The General Division erred in law in its decision.

[10] An application for permission 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 at the hearing of the appeal the merits. At the permission to appeal stage, the Claimant does not have to prove his case but must establish that his appeal has a reasonable chance of success. In other words, he has to show that there is arguably a reviewable error based on which the appeal might succeed.

¹ *Sibbald v Canada (Attorney General)*, 2022 FCA 157. Except in exceptional circumstances that are not applicable here.

² See section 58(1) of the *Department of Employment and Social Development Act*.

[11] I will give permission to appeal if I am satisfied that at least one of the Claimant's stated grounds of appeal gives the appeal a reasonable chance of success.

I am not giving the Claimant permission to appeal

[12] The Claimant argues that the letter from December 4 was given to his employer on December 5 after being let go to protect himself. He argues that he did not voluntarily leave his job and that it was the employer who ended his employment.

[13] The General Division considered that the Claimant initially told the Commission that the employer was not open to discussing the possibility of part-time work and that this caused him to lose job opportunities. He then decided to leave.³

[14] The General Division found that the Claimant was not happy at work because it did not have enough work for him. So, he offered the employer to work part-time. The General Division found that the employer was not interested in the Claimant's offer to work part-time. The employer wanted him to complete his contract on a full-time basis. So, the parties agreed to end the employment.

[15] The General Division found that the Claimant had reasonable alternatives to leaving when he did. He could have stayed at his job until the end of his employment contract, which was ending three months later. He could also have made sure that he had another job in the immediate future before leaving his job or asked for unpaid leave from his employer.

[16] The uncontested evidence before the General Division is that the Claimant wanted to work part-time. The employer was not interested. The parties decided to end the employment before the contract ended.

[17] Employment Insurance case law has clearly established that a claimant who tells their employer that they are less available to work than before, is asking the employer to

³ See GD3A-20.

end the employment contract if the employer cannot accommodate the employee's reduced availability.

[18] This means dismissal is only the sanction of the real cause of the loss of employment, in other words, the employee unilaterally deciding to reduce his availability. Dismissal is only the logical consequence of the employee's deliberate act and cannot erase the fact that there was first and foremost voluntary leaving on the part of the employee.⁴

[19] As the General Division decided, a reasonable alternative would have been to stay at his job until the end of the employment contract, which was ending three months later. He could also have made sure that he had another job in the immediate future before leaving his job to avoid causing his unemployment situation.

[20] Unfortunately for the Claimant, an appeal to the Appeal Division is not a new hearing where a party can re-present evidence and hope for a new, favourable outcome.

[21] The Claimant has not raised any errors of jurisdiction or law, nor did he identify 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.

[22] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for permission to appeal, I have no choice but to find that the appeal has no reasonable chance of success.

⁴ *Canada (Attorney General) v. Côté*, 2006 FCA 219.

Conclusion

[23] Permission to appeal is refused. The appeal will not proceed.

Pierre Lafontaine
Member of the Appeal Division