Citation: *MI v Canada Employment Insurance Commission*, 2024 SST 792

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	M. I.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated May 27, 2024 (GE-24-1605)

Tribunal member:	Pierre Lafontaine
Decision date:	July 9, 2024
File number:	AD-24-431

Decision

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

Overview

[2] The Applicant (Claimant) stopped working and applied for EI benefits. The Respondent (Commission) decided that she voluntarily left (or chose to quit) her job without just cause, so it couldn't pay her benefits.

[3] The Commission says that, instead of leaving when she did, the Claimant could have tried to work out her issues with the new owner. She could have continued working until she secured new employment. There is nothing to suggest that the situation was so intolerable she needed to leave when she did.

[4] After an unsuccessful reconsideration, the Claimant appealed to the General Division.

[5] The General Division found that the Claimant voluntary left her job. It found that the Claimant had other reasonable alternatives to leaving her job when she did. It concluded that the Claimant did not have just cause for leaving her employment.

[6] The Claimant seeks leave to appeal of the General Division's decision to the Appeal Division. The Claimant puts forward that she was no longer able to stay in the work environment due to toxicity that was affecting her mental health and causing many sleepless nights and anxiety. She puts forward that two other employees made it difficult to work with. The Claimant submits that the new owner had already hired someone to replace her before she left.

[7] I must decide whether the Claimant has raised some reviewable error of the General Division upon which the appeal might succeed.

[8] I refuse leave to appeal because the Claimant's appeal has no reasonable chance of success.

Issue

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

Preliminary remarks

[10] It is well established that I can only consider the evidence that was presented to the General Division to decide the present application for leave to appeal. The powers of the Appeal Division are limited by law.[1]

Analysis

[11] The law specifies the only grounds of appeal of a General Division decision.[2] 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.

[12] 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 her 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.

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[1] *Sibbald v Canada (Attorney General)*, 2022 CAF 157.
[2] Section 58(1) of the *Department of Employment and Social Development Act*.

[13] Therefore, before I can grant leave to appeal, 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.

I am not granting the Claimant leave to appeal

[14] The Claimant puts forward that she was no longer able to stay in the work environment due to toxicity that was affecting her mental health and causing many sleepless nights and anxiety. She puts forward that two other employees made it difficult to work with. The Claimant submits that the new owner had already hired someone to replace her before she left.

[15] The General Division had to determine whether the Claimant had just cause to voluntarily leave her employment. This must be determined at the time she left.

[16] 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.

[17] The General Division found that the Claimant left her job. She had the choice to stay but decided to leave her job before the new owner took over. She did not speak to the new owner and assumed he wanted her to leave after he purchased her husband's share of the business. She felt she had to resign to not create or be in an awkward situation.

[18] The General Division found that the Claimant had reasonable alternatives available to her other than leave her employment when she did. She could have remained employed until she sought and found other, more suitable, employment. She could have attempted mitigation with her employer regarding the possibility of perceived awkwardness issues.

[19] In her application for benefits, the Claimant indicated that she had quit her job.[3] The employer indicated in the *Record of Employment* that the Claimant quit her job.[4] The new owner never told her to leave, and he wasn't opposed to her staying.[5] The Claimant further indicated that she did not discuss any of her issues with the new owner.[6]

[20] It is well established that when a claimant is not satisfied with their working conditions, or have work related health issues, they must first discuss with their employer prior to leaving to give the employer an opportunity to fix the problem. The Claimant and the new owner stated that these issues were never discussed between them prior to her leaving the job.

[21] The evidence presented to the General Division does not support a conclusion that her working conditions were unbearable to the point that she had no alternative but to leave her employment immediately. The Claimant gave her employer notice before leaving her job.

[22] As stated by the General Division, the Claimant made a personal choice to leave her employment when she did and although it may have been a good reason for her, it does not meet the standard of just cause required in EI law to allow benefits to be paid.

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

[24] In her 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. She has not identified errors in law nor identified any

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[3] GD3-7.
[4] GD3-23.
[5] GD3-27 and GD3-28.
[6] GD3-12.

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.

[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 her 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