Citation: *SJ v Canada Employment Insurance Commission*, 2024 SST 1079

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	S. J.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated July 19, 2024 (GE-24-1861)

Tribunal member:	Glenn Betteridge
Decision date:	September 9, 2024
File number:	AD-24-518

Decision

[1] S. J. hasn't shown his appeal has a reasonable chance of success. So, I can't give permission for his appeal to go forward.

[2] This means the General Division decision stands unchanged.

Overview

[3] S. J. is the Claimant in this case.

[4] Between the beginning of April 2023 and the end of January 2024, he started and left three jobs. Then he applied for Employment Insurance (EI) regular benefits.

[5] The Canada Employment Insurance Commission (Commission) decided that he had voluntarily left each job without just cause (in other words, a reason the law accepts).[1] This meant he was disqualified from getting EI benefits.[2] The Commission upheld its decision when the Claimant asked it to reconsider.

[6] The Claimant appealed to this Tribunal's General Division. The General Division dismissed his appeal. It decided that he voluntarily left (quit) each job without just cause.

[7] The Claimant has now asked for permission to appeal the General Division decision. I can only give permission if his appeal has a reasonable chance of success. This means the same thing as an arguable case the General Division made an error that the law lets me consider.

Issues

[8] I have to decide two issues.

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[1] See section 29(c) of the *Employment Insurance Act* (EI Act).
[2] See section 30(1) of the EI Act.

- Is there an arguable case the General Division process or hearing was unfair to the Claimant?

- Is there an arguable case the General Division made an important factual error?

I am not giving the Claimant permission to appeal

[9] I reviewed the General Division appeal file.[3] I listened to the recording of the General Division hearing.[4] I read the General Division decision. And I reviewed the Claimant's application to the Appeal Division.[5]

[10] I am not giving the Claimant permission to appeal, for the reasons that follow.

The test for getting permission to appeal

[11] To get permission, the Claimant's appeal has to have a reasonable chance of success.[6] This means he has to show there is an arguable case the General Division made an error:

- It used an unfair process, prejudged the case, or was biased—this is called a procedural fairness or natural justice error.

- It didn't decide an issue it should have decided, or decided an issue it should not have decided—this is called a jurisdictional error.

- It made a legal error.

- It based its decision on an important factual error.[7]

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[3] See GD2, GD3A, GD3B, GD3C, GD4A, GD4B, and GD4C.
[4] The hearing lasted about one hour. The recording is in two parts.
[5] See AD1 and AD1A.
[6] Section 58(2) of the *Department of Employment and Social Development Act* (DESD Act) says that I have to give permission to appeal if the appeal has a reasonable chance of success. This means the same as having an "arguable case." See *O'Rourke v Canada (Attorney General)*, 2018 FC 498; *Osaj v Canada (Attorney General)*, 2016 FC 115 at paragraph 12; and *Ingram v Canada (Attorney General)*, 2017 FC 259 at paragraph 16.
[7] These are the grounds of appeal in section 58(1) of the DESD Act. I refer to these ground as errors.

[12] This test is easy to meet.[8]

– What the law says about voluntarily leaving and just cause

[13] In voluntary leaving appeals, the General Division has to decide two things.[9] First, it has to decide whether the Commission has shown that the person had a choice to leave their job and chose to leave. Second, if the Commission has shown that, it has to decide whether the person has shown they had just cause for quitting in all the circumstances that existed when they quit.

[14] The Claimant and the Commission agreed that he quit all three jobs.[10] So, the General Division hearing and its decision focused on the circumstances that existed when he quit each job, and whether he had a reasonable alternative to quitting in those circumstances.

[15] In most cases, a person has to try to resolve workplace conflicts with their employer or show efforts to find another job before they decide to quit.[11]

There isn't an arguable case the General Division process was unfair, or the member was biased or prejudged the Claimant's case

[16] The Claimant checked the box that says the General Division didn't follow procedural fairness.[12] But he didn't give any reasons to support that argument.

[17] The General Division makes an error if it uses an unfair **process**.[13] These are called procedural fairness or natural justice errors. The question is whether a person knew the case they had to meet, had an opportunity to respond to that case, and had an impartial decision-maker consider their case fully and fairly.[14]

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[8] This legal test is described in cases like *Osaj v Canada (Attorney General)*, 2016 FC 115 at paragraph 12; and *Ingram v Canada (Attorney General)*, 2017 FC 259 at paragraph 16.
[9] See *Canada (Attorney General) v White*, 2011 FCA 190, and section 29(c) of the EI Act.
[10] See paragraph 13 of the General Division decision.
[11] See *Canada (Attorney General) v White*, 2011 FCA 190; and *Canada (Attorney General) v Murugaiah,* 2008 FCA 10.
[12] See AD1A-3.
[13] This is a ground of appeal under section 58(1)(a) of the DESD Act.
[14] See *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69; and *Kuk v Canada (Attorney General)*, 2024 FCA 74.

[18] I have reviewed the documents that were before the General Division, listened to the hearing recording, and read the decision. Nothing shows me the procedure at the General Division was unfair to the Claimant. And nothing shows me that the member was biased or had prejudged the case.

[19] So, the Claimant hasn't proven the General Division process was unfair to the Claimant.

There isn't an arguable case the General Division made an important factual error

[20] The General Division makes an important factual error if it bases its decision on a factual finding it made by ignoring or misunderstanding relevant evidence.[15] In other words, the evidence goes squarely against or doesn't support a factual finding the General Division had to make to reach its decision.

[21] The law also says I can presume the General Division reviewed all the evidence—it doesn't have to refer to every piece of evidence.[16]

[22] The Claimant checked the box that says the General Division made an important factual error.[17] Then he made three arguments.

– The General Division considered and dealt with the contradictory evidence

[23] First, he argued that the General Division didn't have proof that what his employer from job 1 (X) told the Commission was true.[18] He said it wasn't. He says the General Division should have reviewed the emails he sent to the employer.

[24] I don't accept the Claimant's argument. The General Division reviewed and weighed the relevant evidence. It acknowledged that the Claimant said the employer's

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[15] Section 58(1)(c) of the DESD Act says it is a ground of appeal where the General Division based its decision on an erroneous finding of fact it made in a perverse or capricious manner or without regard for the material before it. I have described this ground of appeal using plain language, based on the words in the Act and the cases that have interpreted the Act.
[16] See *Sibbald v Canada (Attorney General)*, 2022 FCA 157 at paragraph 46.
[17] See AD1A-3.
[18] See AD1A-11.

statements were wrong.[19] And it effectively accepted the Claimant testimony that he worked a full day.[20] So, it considered and dealt with the contradictory evidence.

[25] Then the General Division made a finding of fact about why he quit job 1: "I have no reason to doubt the Appellant's statement that the workspace he was assigned didn't meet his standards. But I find from the Appellant's testimony that he quit the job because it wasn't the right fit for him."[21] This is what the Claimant said at the hearing.[22]

[26] The Claimant testified that after he quit he sent 10 emails to the employer to get paid for the day he worked. These emails weren't about the circumstances that existed when he quit. They were about events after he quit. So, the General Division could not consider them.[23]

[27] So, the General Division's finding about the circumstances that existed when he quit job 1 is supported by the evidence, and it didn't misunderstand or ignore relevant evidence.

– **The General Division didn't base its decision on confusion about the evidence**

[28] Second, the Claimant argued that the General Division mixed up his evidence about why he left the three jobs. The General Division member "wasn't organized" and mixed up the reasons he left job 2 (X) and job 3 (X). The Claimant points to paragraph 23 of the General Division decision. He says his evidence about not being given a proper desk and having to sit with another operator was about job 2, not job 1.

[29] At paragraph 23, the General Division referred to the Commission's notes of its conversation with the Claimant about job 1. Those notes say, "Client says that they did not give him a desk of his own and he was made to sit with another operator despite

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[19] See paragraph 25 of the General Division decision.
[20] See paragraph 22 of the General Division decision.
[21] See paragraph 27 of the General Division decision.
[22] Listen to Part 2 of the recording of the General Division hearing at 20:00 and following. The Claimant testified he didn't see a future in the job. It wasn't in his industry, and even if he had stayed, his heart would not have been into the job.
[23] See *Canada (Attorney General) v Lamonde*, 2006 FCA 44; *Canada (Attorney General) v Thompson*, 2007 FCA 391; *Canada (Attorney General) v Furey*, A-819-95 (FCA); and *Tanguay v Unemployment Insurance Commission*, A-1458-84 (FCA).

being hired for a supervisor position. Asked client if there was any clear indication that the employer would not have a desk for him the next day or within a week, or had the employer told him that this would be his permanent set-up."[24]

[30] So, the General Division didn't make a mistake or misunderstand the Commission's evidence—it was about job 1.

[31] Even if the Commission was wrong about this—in other words, it confused the evidence—the General Division didn't base its decision on this confusion. The Claimant agreed he quit the job because the job wasn't the right fit for him. So, the confusion had no bearing on the General Division's decision that the Claimant had a reasonable alternative to quitting—he could have stayed at the job until he found a new one.[25]

– **The Appeal Division can't reweigh the evidence**

[32] Third, the Claimant argued that even though the General Division acknowledged his reasons for quitting job 2 and job 3, it decided he didn't have just cause.[26] In both jobs he says that the circumstances counted as discrimination under the *Canadian Human Rights Act*. He doesn't state the ground of discrimination (for example, race, sex, colour, religion) he is relying on.

[33] For job 2 and job 3 the General Division assessed the evidence, without misunderstanding or ignoring any relevant evidence. It identified and reviewed the *Employment Insurance Act* section 29(c) circumstances the Claimant was relying on to justify his decision to quit each job. And it decided the Claimant had reasonable alternatives to quitting each job in the circumstances.

[34] The evidence before the General Division—the documents and the Claimant's testimony—doesn't support the Claimant's argument that he was discriminated against by his employer in job 2 or job 3. The Claimant's argument seems to be based on a misunderstanding of the legal meaning and test for discrimination.

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[24] See GD3-34.
[25] See paragraph 27 of the General Division decision.
[26] See AD1A-12 and AD1A-13.

[35] The Claimant disagrees with how the General Division weighed the evidence to reach its findings of fact, and its application of the settled law to those findings. Unfortunately for the Claimant, I can't reweigh the evidence.[27] And he hasn't shown the General Division ignored or misunderstood relevant evidence about the circumstance that existed when he quit jobs 2 and 3, and the alternatives that were reasonable in those circumstances.

[36] To summarize this section, the Claimant hasn't shown the General Division made an important factual error.

Conclusion

[37] The Claimant hasn't shown an arguable case the General Division made an error the law lets me consider. In other words, his appeal doesn't have a reasonable chance of success.

[38] I can't give him permission to appeal the General Division decision. So, his appeal won't go ahead, and the General Division decision stands unchanged.

Glenn Betteridge
Member, Appeal Division

[27] See *Tracey v Canada (Attorney General)*, 2015 FC 1300 at paragraph 33.