Citation: *TA v Canada Employment Insurance Commission*, 2024 SST 1287

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	T. A.
Representative:	E. L.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated August 27, 2024 (GE-24-2444)

Tribunal member:	Stephen Bergen
Decision date: **CORRIGENDUM DATE**	~~October 23, 2024~~ **December 10, 2024**
File number:	AD-24-714

Decision

[1] I am refusing leave (permission) to appeal. The appeal will not proceed.

Overview

[2] T. A. is the Applicant. I will call her the Claimant because this application is about her claim for Employment Insurance (EI) benefits.

[3] The Claimant left her job on April 15, 2024, after the employer scheduled her for a reduced number of shifts. She applied for EI benefits. The Respondent, the Canada Employment Insurance Commission (Commission), decided it could not pay her benefits because she voluntarily left her job without just cause.

[4] The Claimant asked the Commission to reconsider, but it would not change its decision. When the Claimant appealed to the General Division of the Social Security Tribunal, the General Division dismissed her appeal. Now she is asking the Appeal Division for permission to appeal.

[5] I am refusing leave to appeal. The Claimant has not made out an arguable case that the General Division made an important error of fact.

Issue

[6] Is there an arguable case that the General Division made an important error of fact by ignoring or misunderstanding the evidence?

I am not giving the Claimant permission to appeal

General Principles

[7] For the Claimant's application for leave to appeal to succeed, her reasons for appealing would have to fit within the "grounds of appeal." The grounds of appeal identify the kinds of errors that I can consider.

[8] I may consider only the following errors:

a) The General Division hearing process was not fair in some way.
b) 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 (error of jurisdiction).
c) The General Division based its decision on an important error of fact.
d) The General Division made an error of law when making its decision.[1]

[9] To grant this application for leave and permit the appeal process to move forward, I must find that there is a reasonable chance of success on one or more grounds of appeal. Other court decisions have equated a reasonable chance of success to an "arguable case."[2]

Important error of fact

[10] There is no arguable case that the General Division made an important error of fact.

[11] An "important error of fact" is where the General Division bases its decision on a finding of fact that ignores or misunderstands relevant evidence, or does not follow logically from the evidence.

[12] The Claimant asserts that the General Division ignored or misunderstood evidence. However, she has not pointed to any evidence that the General Division ignored or misunderstood when it made the key findings on which its decision was based.

[13] I will review the key findings and the evidence on which the General Division relied.

[14] The General Division found that the Claimant voluntarily left her employment. The Claimant continues to dispute this. She claims that the employer "constructively" dismissed her when it began scheduling her with a reduced number of shifts.

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[1] This is a plain-language version of the grounds of appeal. The full text is in section 58(1) of the *Department of Employment and Social Development Act* (DESDA).
[2] See *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; and *Ingram v Canada (Attorney General)*, 2017 FC 259.

[15] The General Division understood the Claimant's evidence that her shifts had been reduced and understood that her "formal letter of resignation" stated that she believed the employer's actions amounted to constructive dismissal. However, the General Division had to apply the legal test for "voluntary leaving" from the case law.[3] The law says that "voluntary leaving" is determined by the answer to a single question: "Did she have a choice to stay or to leave?" Even though the Claimant felt she was constructively dismissed, the General Division found that she still had a choice to stay or leave. The Claimant chose to leave.

[16] Because it found she voluntarily left her job, the General Division had to decide if she had just cause for doing so. It found that the Claimant did not have just cause for leaving. The Claimant again disagrees.

[17] To decide whether the Claimant had just cause for leaving, the General Division was required to consider whether she had reasonable alternatives to leaving when all the circumstances are considered. The Claimant had told the General Division that the employer reduced her shifts as a response to her efforts to get paid for her sick days. She added that she could not afford to live with only the reduced number of shifts. She also discussed how the employer was harassing her in other ways.

[18] The General Division reviewed the circumstances that were suggested by the evidence. It implicitly considered whether her income was affected by a modification to the terms of her employment, when it considered her claim that her shifts had been reduced.[4] It found that she was an on-call employee who was not guaranteed a minimum number of shifts.

[19] The General Division acknowledged the Claimant's evidence that she had been working five shifts per week for a significant length of time. It noted that this was confirmed by the employer's evidence that she was working full-time for "months." However, the evidence showed that the terms of her employment had not changed

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[3] See *Canada (AG) v. Peace*, 2004 FCA 56.
[4] A "significant modification in the terms and conditions related to her wages" is a relevant circumstance that is listed in section 29(c)(vii) of the EI Act.

since she agreed to the supply contract. The General Division's found that she was an on-call worker who could be scheduled to work in advance or day-to-day. This finding relied on both the original employment supply contract and on the employer's statements that these were the terms under which she continued to be employed. It also relied on the Claimant's own admission that she was on call when she started the job in November 2022, and was not on a schedule as recently as the summer of 2023—even though she stated she was routinely asked to come in during the summer for what she said were full-time hours. The General Division noted the Claimant's testimony that the employer told her the original contract was invalid. However, it did not accept that the contract was invalid, which was based on what the employer told the Commission about the employment relationship, and on the fact that the employer sent a copy of the contract to the Commission.

[20] The General Division also considered whether the Claimant was experiencing bullying and harassment.[5] The Claimant asserted that the employer bullied or harassed her in three ways:

- It reduced her shifts;
- It sent an email saying she should stop blaming others for her own mistake, and;
- The owners did not always greet her and had conversations with other teachers in front of her in a language she did not understand.

The General Division did not accept that these events amounted to bullying or harassment.

[21] By the time, the General Division considered "bullying and harassment," it had already found that the employer reduced her shifts as a response to its own changing needs. It rejected the Claimant's assertion that the environment was toxic. It did not consider that the one email telling the Claimant not to blame others for her own mistakes, which the employer acknowledged to be inappropriate, or the way the employer acted in front of the Claimant, were so significant as to create a toxic

[5] Harassment is a relevant circumstance that is listed in section 29(c)(i) of the EI Act

environment. It also mentioned how the Claimant said she had little to do with the owner.

[22] The Claimant has not identified how the General Division misunderstood any of the evidence on which it relied. She has not pointed to any relevant evidence that was before the General Division and which the General Division ignored.

[23] Instead, the Claimant's application disagrees with all of the General Division's findings of fact, and she seeks to reargue the facts on which the decision was based. In support of her arguments, she has included additional evidence related to when she worked and what her schedule had been.[6]

[24] I appreciate that the Claimant disagrees with the General Division's conclusions, but the Appeal Division is not a chance for a fresh hearing of the evidence. I have no authority to interfere with how the General Division has weighed or evaluated the evidence, even if I might have decided differently.[7] Nor can I consider new evidence that that was not before the General Division, when that evidence is offered to help prove facts that are at issue.[8]

[25] I can only find an error of fact where I accept that the General Division has based its decision on a finding of fact that ignores or misunderstands relevant evidence, or on a finding that does not follow logically from the evidence.[9]

[26] The Claimant has not made out an arguable case that the General Division made such an error. Her appeal has no reasonable chance of success.

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[6] New evidence at AD1-11, 12, 15–43.
[7] See, for example: *Hideq v Canada (Attorney General)*, 2017 FC 439, *Parchment v Canada (Attorney General)*, 2017 FC 354, *Johnson v Canada (Attorney General)*, 2016 FC 1254, *Marcia v Canada (Attorney General)*, 2016 FC 1367.
[8] *Mohamed v. Canada (Attorney General*), 2016 FC 482; *Mette v. Canada (Attorney General*), 2016 FCA 276; *Griffen v Canada (Attorney General*), 2016 FC 874.
[9] This is a paraphrase. Section 58(1)(c) of the DESDA actually says that an error of fact is where the General Division "based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it."

[27] ~~There is no arguable case that the General Division made an important error of fact when it found that the Claimant had not asked the Claimant for time off in the meeting where his father was fired.~~

[28] The Claimant has no reasonable chance of success.

Conclusion

[29] I am refusing permission to appeal. This means that the appeal will not proceed.

Stephen Bergen
Member, Appeal Division