Citation: *AL v Canada Employment Insurance Commission*, 2025 SST 127

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	A. L.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated January 28, 2025 (GE-25-61)

Tribunal member:	Stephen Bergen
Decision date:	February 15, 2025
File number:	AD-25-102

Decision

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

Overview

[2] A. L. is the Applicant. I will call him the Claimant because this application is about his claim for Employment Insurance (EI) benefits. The Respondent is the Canada Employment Insurance Commission, which I will call the Commission.

[3] The Claimant was laid off from his job on August 15, 2024, because his employer expected to be affected by a rail strike. The employer issued a Record of Employment (ROE) indicating that he was laid off due to a shortage of work.

[4] At about the same time, the Claimant requested a medical leave. This was supported by a medical note that he should be off work until August 31, 2024. The Claimant had short-term disability insurance which was approved until September 15, 2024.

[5] On September 5, 2024, the Claimant's employer asked him to return to work but the Claimant said he could not return at that time because he was still sick, and he had no money to commute to work. He also told the employer that he was quitting. The Claimant believed that his job environment was making him sick.

[6] The Claimant applied for regular EI Benefits on September 3, 2024, based on how the employer had laid him off due to a shortage of work. However, the Commission decided that he voluntarily left his employment on September 5, 2024. It could not pay the Claimant benefits because it found that he did not have just cause for quitting.

[7] The Claimant asked the Commission to reconsider but it would not change its decision. He appealed to the General Division of the Social Security Tribunal, which dismissed his appeal. Now he is asking the Appeal Division for permission to appeal.

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

Issue

[9] Is there an arguable case that the General Division made an important error of fact by accepting that the Claimant was picking up his Record of Employment?

I am not giving the Claimant permission to appeal

General Principles

[10] For the Claimant's application for leave to appeal to succeed, his 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.

[11] 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]

[12] 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

[13] There is no arguable case that the General Division made an important error of fact by overlooking or misunderstanding evidence about the Claimant's ROE.

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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.

[14] The Claimant argues that he obtained his ROE electronically and that the General Division made a mistake when it said he picked it up.

[15] In his testimony to the General Division, the Claimant repeatedly said that he picked up his paystub and cheque from the employer. He did not say that he also picked up his ROE from the employer.

[16] However, there was an employer text in evidence in which the employer stated that he had "picked up his ROE and his paystub."[3] When the General Division brought up this other text during the hearing, the Claimant did not take the opportunity to say that the employer text was incorrect, and that he did not pick up his ROE from the employer.[4]

[17] I appreciate that the Claimant is trying to correct the record now, but there was evidence before the General Division on which it might have inferred that he picked up his ROE from his employer.

[18] More importantly, the question of whether the Claimant received his ROE electronically or picked it up from his employer did not matter to the General Division decision.

[19] The General Division makes an important error of fact only when it **bases its decision** on a finding that ignores or misunderstands **relevant** evidence, or on a finding that does not follow rationally from the evidence.[5]

[20] The General Division decided that the Claimant voluntarily left his job. After considering the evidence on the file, it found that the Claimant had communicated to the

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[3] See GD3-30.
[4] Listen to the audio recording of the General Division hearing at timestamp 00:26:40.
[5] I have tried to make this error more understandable. This ground of appeal is defined in section 58(1)(c) of the DESDA: The General Division will have made an error of fact where it, "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."

employer that he was quitting.[6] The Claimant also confirmed in his testimony that he quit his job at the time that he was called back to work.[7]

[21] How the Claimant obtained his ROE does not modify any of the evidence supporting the General Division's finding that he quit.

[22] The General Division also decided that the Claimant did not have just cause for leaving his employment. This means that it decided that the Claimant had reasonable alternatives to leaving. [8]

[23] It arrived at this decision by considering the Claimant's evidence about his circumstances. This included the initial work shortage, the Claimant's medical leave, his medical condition and belief that his work environment was causing his condition, his opinion that his work environment was "chaotic," and his difficulty financing his transportation to work.

[24] The General Division found that the Claimant had reasonable alternatives to leaving that he had not explored. It found that he could have

- talked to his doctor about continuing his short-term disability;
- discussed his workplace health concerns with his employer;
- requested accommodations from his employer or a formal leave of absence, or;
- explored other transportation options or asked for an advance on his pay.

[25] How the Claimant obtained his ROE cannot be an "important error of fact" because it is not relevant to the findings on which the General Division was based. It is not relevant to whether he left his job voluntarily and it is not relevant to whether any of the reasonable alternatives found by the General Division were available.

[26] I appreciate that the Claimant is self-represented. I am following the lead of the Federal Court, which says I need to be cautious at the leave to appeal stage, especially

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[6] See footnote 2 to para 9 of the General Division decision.
[7] Listen to the audio recording of the General Division hearing at timestamp 00:21:45.
[8] See para 29(c) of the *Employment Insurance Act*.

with unrepresented applicants. I do not want to refuse to hear the Claimant's appeal just because he may not have expressed his reasons for appealing in the best way possible.[9]

[27] I have reviewed the record, in case there were any other evidence that the General Division may have ignored or misunderstood that might be important to its decision. Unfortunately for the Claimant, I have not discovered an arguable case that the General Division made some other important error of fact.

[28] The Claimant's appeal 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

[9] See the Federal Court decision in *Karadeolian* v. *Canada (Attorney General)*, 2016 FC 615