Citation: *SS v Canada Employment Insurance Commission*, 2025 SST 134

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

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

Decision under appeal:	General Division decision dated January 7, 2025 (GE-24-4019)

Tribunal member:	Glenn Betteridge
Decision date:	February 18, 2025
File number:	AD-25-69

Decision

[1] Leave (permission) to appeal is refused. The appeal will not go forward.

Overview

[2] S. S. is the Claimant. He quit his job as an engineer and applied for the Employment Insurance (EI) regular benefits.

[3] The Canada Employment Insurance Commission (Commission) disqualified him from getting benefits because he didn't have just cause for quitting.[1] The Claimant asked the Commission to reconsider. It maintained its original decision.

[4] The General Division dismissed the Claimant's appeal. It decided he had reasonable alternatives to quitting in the circumstances that existed when he quit (paragraphs 35 to 38). He could have reported the safety issue to an external safety authority. He could have continued to work while he looked for another job. He could have asked his employer for a leave of absence.

[5] To get permission to appeal the General Division decision, the Claimant has to show his appeal has a reasonable chance of success. Unfortunately, he hasn't.

Preliminary matter: the General Division hearing recording is incomplete, but that doesn't prejudice the Claimant

[6] In the Claimant's application to appeal, he argued the General Division made important factual errors. He didn't refer to specific evidence the General Division ignored or misunderstood—not to documents or anything he said at the hearing. He is relying on his knowledge and opinion about legal liability and occupational health and safety standards.

[7] In his application he wrote, "it sounded like the last judge was at someone else's hearing and ignored or didn't understand much of what I said."[2] So I listened to the

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[1] See section 29(c) and 30(1) of the *Employment Insurance Act* (EI Act).
[2] See AD1-5.

recording of the General Division hearing. Unfortunately, the hearing recording ends suddenly at 32:53. But the hearing had not ended.

[8] I considered whether the lack of a complete hearing recording prejudiced the Claimant in his application to appeal. I kept in mind the law says I can presume the General Division reviewed all the evidence—it doesn't have to refer to every piece of evidence.[3]

[9] I find the Claimant isn't prejudiced because I can fix any potential prejudice by applying the "reasonable chance of success" test in two alternative ways:

- First, I will consider his arguments based on the General Division file and the partial hearing recording. I will consider whether the General Division ignored or misunderstood evidence from these two sources.

- Second, I will assume that Claimant proved two of the facts he says the General Division got wrong because it ignored or misunderstood his evidence. Then I will consider whether his appeal has a reasonable chance of success.

[10] So this is what I will do to avoid any prejudice or unfairness to the Claimant.

Issues

[11] I have to decide three issues.

- Is there an arguable case the General Division made the important error of fact the Claimant says it did?

- If I assume the Claimant's situation was one of "compromised liability" and assume his safety officer duties were exclusively about trucks, does his appeal have a reasonable chance of success?

[3] See *Sibbald v Canada (Attorney General)*, 2022 FCA 157 at paragraph 46.

- Is there an arguable case the General Division made one of the other types of errors the law lets me consider?

I am not giving the Claimant permission to appeal

[12] I read the Claimant's application to appeal.[4] I read the General Division decision. I reviewed the documents in the General Division file.[5] And I listened to the partial hearing recording.

[13] I have no doubt the Claimant was deeply concerned for the safety of his co-workers and his potential legal liability. It's also clear the Claimant doesn't agree with the General Division decision. But there isn't an arguable case the General Division made an error that might change the outcome in his appeal. In other words, his appeal doesn't have a reasonable chance of success.

[14] For these reasons and the reasons that follow, I am not giving the Claimant permission to appeal.

The test for getting permission to appeal

[15] I can give the Claimant permission to appeal if he shows his appeal has a reasonable chance of success.[6] This means he has to show an arguable case the General Division made one of the following errors that might change the outcome in his appeal.[7]

- It used an unfair process or was biased.[8]
- It used its decision-making power improperly, called a jurisdictional error.
- It made an important factual error.

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[4] See AD1.
[5] See GD2, GD3, and GD4.
[6] See section 58(2) of the *Department of Employment and Social Development Act* (DESD Act).
[7] The Federal Court has said an appeal has a reasonable chance of success when there is some arguable ground upon which the appeal might succeed. See *Brown v Canada (Attorney General)*, 2024 FC 1544 at paragraph 41, citing *Osaj v Canada (Attorney General)*, 2016 FC 115 at paragraph 12.
[8] The bullets are the grounds of appeal in section 58(1) of the DESD Act. I call them errors.

- It made a legal error.

[16] I have to start by considering the errors the Claimant set out in his application.[9] The Claimant is representing himself. This means I should not mechanistically apply the permission to appeal test.[10]

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

– The Claimant's arguments and the law I have to apply

[17] The Claimant checked the box that says the General Division made an important error of fact.[11] Then he made three arguments.

- The General Division did not recognize the situation as one of compromised liability due to his employer unlawful removal of a CSA approved light curtain for a machine he was responsible for as Maintenance Engineer.

- The General Division misunderstood that as Safety Compliance Officer he was responsible for machinery. As the Officer he was responsible for truck safety.

- The General Division ignored his evidence and argument about unilateral change in job description.

[18] 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.[12] In other words, there is some evidence that goes squarely against or doesn't support a factual finding the General Division made to reach its decision.

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[9] See *Twardowski v Canada (Attorney General)*, 2024 FC 1326 at paragraph 26.
[10] The Federal Court has said this in decisions like *Griffin v Canada (Attorney General)*, 2016 FC 874; *Karadeolian v Canada (Attorney General)*, 2016 FC 615; and *Joseph v Canada (Attorney General)*, 2017 FC 391.
[11] See AD1-4.
[12] 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.

[19] It is the General Division's job to review and weigh the evidence.[13] I can't re-weigh the evidence or substitute my view of the facts. I can presume the General Division reviewed all the evidence—it doesn't have to refer to every piece of evidence.[14]

[20] Next, I will consider each of the Claimant's three arguments.

– The General Division didn't ignore the Claimant's evidence about his potential liability

[21] The Claimant sent the Appeal Division new evidence that the General Division didn't have. I can't consider his evidence about penalties or fines under provincial occupational health and safety law.[15] It doesn't meet an exception to the general rule that the Appeal Division can't consider new evidence.[16]

[22] The General Division considered the Claimant's evidence (and the parties' arguments) about his potential legal liability (paragraphs 6, 24, 32, and 33). And it considered whether he had reasonable alternatives to quitting to address his potential liability (paragraph 37).

[23] The General Division didn't have to accept his opinion of his legal liability based on his understanding of the laws he cited. And it didn't have to accept his argument that he had just cause for quitting—in other words, no reasonable alternative to quitting in light of his own assessment of his potential liability.

[24] This shows me the General Division didn't ignore his evidence about what he calls a situation of compromised liability. And it didn't ignore his argument that he had to quit because of that compromised liability.

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[13] See *Tracey v Canada (Attorney General)*, 2015 FC 1300 at paragraph 33.
[14] See *Sibbald v Canada (Attorney General)*, 2022 FCA 157 at paragraph 46.
[15] See AD1-4.
[16] See *Sibbald v Canada (Attorney General)*, 2022 FCA 157 at paragraphs 37 to 40.

– The General Division didn't misunderstand the Claimant's role as a safety compliance officer for trucks

[25] The Claimant didn't refer to any paragraph of the decision when he argues the General Division "mistook my position as Safety Compliance Officer as having to do with machinery."[17]

[26] The General Division writes "truck safety compliance officer" and "truck safety and compliance officer" in its decision (paragraphs 3 and 21).

[27] The General Division seems to understand the Claimant's evidence that he had safety responsibilities for machinery in his dual roles as manufacturing engineer and maintenance engineer (paragraphs 6, 20, 23 to 27, 33 and 34).

[28] The General Division refers to the Claimant's position as a compliance and safety officer when it is assessing the Commission's arguments about reasonable alternatives (paragraph 34). The Commission argued that contacting regulatory authorities responsible for workplace safety was a reasonable alternative. Then the General Division considers the Claimant's evidence that he could not think of this alternative until months after he quit (paragraph 28, 4th bullet point).

[29] Then the General Division made a factual inference about the Claimant's capacity to find out about and make a complaint under occupational health and safety laws. It considered the parties' arguments in light of the evidence. Then it found that as a compliance and safety officer it was reasonable to "expect him [the Claimant] to be able to get information about safety rules and processes" (paragraph 34).

[30] I understand the General Division to mean that based on the Claimant's safety and compliance officer role for trucks, it was reasonable to expect he would be able to identify and pursue an occupation health and safety complaint about his employer's removal of the light curtain.

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[17] See AD1-4.

[31] When the General Division assesses the evidence, it can make inferences—as long as the evidence logically and reasonably supports those inferences. In this case, the evidence supports the General Division's inference. So the Claimant hasn't shown the General Division misunderstood his evidence about his truck safety compliance officer role.

– **The General Division didn't ignore the Claimant's evidence about a unilateral change in his job description**

[32] The General Division considered whether the employer made signficant (unilateral) changes in the Claimant's job duties (paragraphs 7, and 18 to 21). The General Division weighed the evidence and found there weren't signficant changes in his job duties (paragraph 18).

[33] The General Division didn't ignore or misunderstand the legally relevant evidence.

[34] Under section 29(c) of the *Employment Insurance Act* (EI Act), the General Division had to consider whether the signficant change existed **at the time the Claimant quit**. The General Division found it didn't exist then—the maintenance engineer change happened **when he was first hired**, and he accepted it at that time (paragraphs 18 and 19). And the General Division considered that the Claimant only implied but didn't give evidence of changes closer to the time he quit (paragraphs 20 and 21).

[35] This shows me the General Division didn't ignore or misunderstand the Claimant's evidence about the change in his job duties as they related to his quitting.

[36] I am not going to assume the Claimant proved this fact in the next section of my analysis, after the summary. I can assume the General Division reviewed all the evidence. The General Division's reasons are very specific—"implied but didn't give evidence." And the fact the Claimant accepted the changes made when he started the job means this doesn't count as a circumstance under section 29(c).

Summary: based on the documents and partial hearing recording, there's no arguable case the General Division made an important factual error

[37] The Claimant hasn't shown the General Division ignored or misunderstood relevant evidence.

[38] I reviewed the documents in the General Division file and listened to the partial hearing recording. My review shows me the relevant evidence supports the General Division decision.

[39] This means there isn't an arguable case the General Division made an important factual error.

Assuming two facts the Claimant says the General Division got wrong, did he have a reasonable alternative to quitting?

[40] The Claimant's appeal doesn't have a reasonable chance of success even if I assume he proved these two circumstances:

- His situation was one of compromised liability. In other words, there was a possibility that if he didn't quit he might be held personally liable if an accident occurred as a result of his employer's unlawful removal of the safety curtain.
- As a safety compliance officer, he was responsible for trucks, not machinery.

[41] The Claimant had at least one reasonable alternatives to quitting in these circumstances. He could have reported the safety infraction to a regulatory body with authority to address his concerns (paragraphs 35 and 37).

[42] This means assuming the factual errors he says the General Division made, these errors would not have changed the outcome in his appeal. Because he didn't prove under section 29(c) of the EI Act he had just cause for quitting in the circumstances that existed when he quit.

There is no other reason I can give the Claimant permission to appeal

[43] The Claimant is representing himself. So, I considered whether there was an arguable case the General Division used an unfair process, or made a jurisdictional or legal error.

[44] The Claimant didn't argue the General Division hearing or process was unfair—not specifically at least. I considered his argument the member "was at someone else's hearing and ignored or didn't understand" under the section about important factual errors, above.

[45] There isn't an arguable case the General Division made a jurisdictional error. The General Division correctly identified the issue it had to decide and the two-step approach to deciding that issue (paragraphs 8 and 9). Then it decided only that issue, using the correct approach.

[46] There isn't an arguable case the General Division made a legal error.

[47] It set out the correct legal test to decide whether the Claimant had just cause issue under section 29(c) of the EI Act (paragraphs 12 to 16). Then it used that test. It grappled with the Claimant's arguments about just cause and the circumstances that exited when he quit. And the General Division's reasons are adequate and intelligible given the facts and the law.[18]

– The General Division's decision is consistent with the purpose of EI regular benefits

[48] The General Division's decision follows the purpose of the EI Act and the legal test for showing just cause for quitting under section 29(c).

[49] The Claimant has argued he was legally justified quitting his job because his employer put him in an impossible legal bind. In other words, he was forced to quit

[18] See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211. See also *Sennikova v Canada (Attorney General)*, 2021 FC 982 at paragraphs 62 and 63, where the court says the Tribunal has to grapple with the right questions and its reason for decision must "add up."

because of his employer's actions. This sounds like a constructive dismissal argument under employment law.

[50] Unfortunately for the Claimant, constructive dismissal isn't the legal test for proving just cause under the voluntary leaving section of the EI Act.[19] The EI Act test for just cause focuses on practical, reasonable alternatives. It does this as a way of managing a public insurance plan that pays benefits to people who are unemployed involuntarily.[20] In other words, people who haven't caused their unemployment.

[51] The courts have said that workers who transform a risk of unemployment into a certainty should not get EI benefits.[21] Unfortunately for the Claimant, this is what he did when he quit instead of pursing the reasonable alternative (or alternatives) that existed at the time he quit.

Conclusion

[52] The Claimant hasn't shown his appeal has a reasonable chance of success.

[53] This means I can't give him permission to appeal.

Glenn Betteridge
Member, Appeal Division

[19] See *Canada (Attorney General) v Peace*, 2004 FCA 56.
[20] See *Canada (Canada Employment and Immigration Commission) v Gagnon*, [1988] SCR 29.
[21] See *Canada (Attorney General) v Langlois*, 2008 FCA 18; and *Canada (Attorney General) v Marier*, 2013 FCA 39.