Citation: *NT v Canada Employment Insurance Commission*, 2025 SST 244

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	N. T.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated February 27, 2025 (GE-25-442)

Tribunal member:	Solange Losier
Decision date:	March 17, 2025
File number:	AD-25-181

Decision

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

Overview

[2] N. T. is the Claimant in this case. She applied for Employment Insurance benefits (benefits).

[3] The Canada Employment Insurance Commission (Commission) decided that she had voluntarily left her job without just cause.[1] There were reasonable alternatives to leaving her job. Because of that, she was disqualified from getting benefits.[2]

[4] The General Division concluded the same.[3] It found that the Claimant didn't have just cause to leave her job and that were reasonable alternatives.

[5] The Claimant is now asking for permission to appeal.[4] She argues that the General Division made an error of law and error of fact in its decision.

[6] I am denying the Claimant's request for permission to appeal because it has no reasonable chance of success.[5]

Issue

[7] Is there an arguable case that the General Division made an error of law or based its decision on an important error of fact when it decided the voluntary leave issue?

Analysis

[8] An appeal can only proceed if the Appeal Division gives permission to appeal.[6]

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[1] See Commission's reconsideration decision at page GD3-44.
[2] See section 30(1) of the *Employment Insurance Act* (EI Act).
[3] See General Division decision at pages AD1A-1 to AD1A-6.
[4] See Application to the Appeal Division at pages AD1-1 to AD1-8.
[5] See section 58(2) of the *Department of Employment and Social Development Act* (DESD Act).
[6] See section 56(1) of the DESD Act.

[9] I must be satisfied that the appeal has a reasonable chance of success.[7] This means that there must be some arguable ground that the appeal might succeed.[8]

[10] I can only consider certain types of errors. I have to focus on whether the General Division could have made one or more of the relevant errors (this is called the "grounds of appeal").

[11] The possible grounds of appeal to the Appeal Division are that the General Division did one of the following:[9]

- proceeded in a way that was unfair
- acted beyond its powers or refused to exercise those powers
- made an error in law
- based its decision on an important error of fact.

[12] The Claimant argues that the General Division made an error of law and error of fact, so my decision will focus on those specific grounds of appeal.

I am not giving the Claimant permission to appeal

– The Claimant's arguments to the Appeal Division

[13] The Claimant argues that she was exposed to potentially serious health issues due to the lack of cleanliness at work. She says that according to section 29(c)(iv) of the *Employment Insurance Act* (EI Act) that there were working conditions that constitute a danger to health or safety.[10] She submits that it was unreasonable to deny her benefits.

[14] Specifically, the Claimant relies on section 6 of the *Digest of Benefit Entitlement Principles* (Digest) and notes there was "no reasonable alternative but to leave" and "when all reasonable alternatives have been exhausted." To support her position, she

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[7] See section 58(2) of the DESD Act.
[8] See *Osaj v Canada (Attorney General)*, 2016 FC 115, at paragraph 12.
[9] See section 58(1) of the DESD Act.
[10] See pages AD1-7 to AD1-8.

also provides a definition for what “reasonable” means and restates that she had no reasonable alternatives.

[15] The Claimant also argues that as an older worker, she has to take many precautions to safeguard her health. The lack of cleanliness in the workplace was problematic. For example, there were no cleaners, areas were not sanitized, the toilet seat had urine and feces staining and the sink was not clean. She says that she acted in a reasonable way and leaving the job was the right thing to do to safeguard her health.

– **Voluntary leaving without just cause**

[16] The EI Act says a claimant is not entitled to get EI benefits if they voluntarily leave their employment without just cause.[11] This results in a “disqualification” to benefits.

[17] A person has just cause for voluntarily leaving their job if, having regard to all the circumstances, they had no reasonable alternative to quitting.[12] The law provides a list of circumstances, which includes working conditions that constitute a danger to health or safety.[13]

[18] To show just cause, the Claimant has to show that, having regard to all the circumstances, on a balance of probabilities, she had no reasonable alternative to leaving her job.

– **The General Division decided that the Claimant didn’t have just cause to leave her job, so she was disqualified from getting benefits**

[19] The Commission decided that the Claimant was disqualified from getting benefits from October 6, 2019.[14] That was the decision the Claimant appealed to the General Division.

[11] See section 30(1) of the EI Act.
[12] See section 29(c) of the EI Act.
[13] See section 29(c)(iv) of the EI Act.
[14] See pages GD3-32 to GD3-33 and GD3-44.

[20] This means that the General Division had to first decide whether the Claimant voluntarily left her job. Following that, it had to decide whether she had just cause and if there were any reasonable alternatives, having regard to all the circumstances.

[21] The General Division decided that the Claimant voluntarily quit her job on October 9, 2024. This wasn't disputed between the parties.[15]

[22] The General Division considered the Claimant's circumstances, specifically whether there were any working conditions that constituted a danger to health and safety (s.29(c)(iv) of the EI Act). It agreed with the Claimant—that the washroom at work was left in an unsanitary state and that it posed a potential safety issue to her.[16]

[23] Despite the unsanitary washroom in the workplace, the General Division found that the Claimant had a reasonable alternative because she could have contacted either the department of health or WorkSafe New Brunswick.[17]

[24] It explained that "it was incumbent upon the Appellant to take all reasonable steps. By simply presuming that neither would act and then not contacting either organization to inquire if this was so, she left reasonable alternatives unexplored."[18]

[25] The General Division concluded that she didn't have just cause to leave her job, there was a reasonable alternative.[19] Because of that, she was disqualified from getting benefits.

– **There is no arguable case that the General Division made an error of law**

[26] An error of law can happen when the General Division does not apply the correct law or uses the correct law but misunderstands what it means or how to apply it.[20]

[15] See paragraph 10 of the General Division decision.
[16] See paragraphs 17–18 of the General Division decision.
[17] See paragraph 22 of the General Division decision.
[18] See paragraph 23 of the General Division decision.
[19] See paragraphs 2, 27–29 of the General Division decision.
[20] See section 58(1)(b) of the DESD Act.

[27] The General Division correctly cited the law and relevant case law for voluntary leave cases.[21] It specifically considered section 29(c)(iv) of the EI Act—whether there were any work conditions that constituted a danger to health and safety. It referred to a decision called *White* that identifies the legal test for voluntary leave cases.[22]

[28] The General Division has to follow the EI Act and relevant case law. That is exactly what it did. The Digest is an administrative tool used by the Commission to ensure consistency in their decisions and to avoid arbitrary decisions. However, the Digest isn't law and the General Division doesn't have to follow it.

[29] There is no arguable case that the General Division made any errors of law.[23] It correctly cited the law, the legal test and referred to relevant case law in its decision.

– **There is no arguable case that the General Division based its decision on an important error of fact**

[30] An error of fact happens when the General Division has "based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it."[24]

[31] Put another way, if the General Division based its decision on an important mistake about the facts of the case, then I can intervene.

[32] The General Division made one minor clerical error in its decision. It dismissed the Claimant's appeal and disqualified her from getting benefits. However, in another place it noted that the "appeal was allowed."[25] It's clear from the decision that the Claimant's appeal was dismissed, so this was only a minor clerical error in the decision.

[33] The Claimant's remaining arguments to the Appeal Division amount to a disagreement with the outcome, but that isn't a reviewable error.

[21] See paragraphs 11–16 of the General Division decision.
[22] See paragraphs 14–15 of the General Division decision.
[23] See section 58(1)(b) of the DESD Act.
[24] See section 58(1)(c) of the DESD Act.
[25] See paragraph 29 of the General Division decision.

[34] The General Division is the trier of fact and it concluded that she didn't have just cause to leave her job. It found that she had a reasonable alternative and could have contacted either the department of health or WorkSafe New Brunswick about the unsanitary washroom at work. She failed to do so.

[35] The Appeal Division has a limited mandate.[26] I can't intervene in order to settle a disagreement about the application of settled legal principles to the facts of a case.[27] This means I can't reweigh the evidence in order to come to a different or more favourable conclusion for the Claimant.

[36] There is no arguable case that the General Division based its decision on an important error of fact when it decided the issue of voluntary leave.[28] Its key findings are supported by the evidence in the file.

Conclusion

[37] I reviewed the file to see if there was an arguable case that the General Division made any other reviewable errors. I considered the documents in the file, examined the decision under appeal, and listened to the audio recording. I am satisfied that the General Division did not misinterpret or fail to consider any relevant evidence.[29]

[38] Permission to appeal is refused. This means that the Claimant's appeal will not proceed. It has no reasonable chance of success.

Solange Losier
Member, Appeal Division

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[26] See section 58(1) of the DESD Act and *Marcia v Canada (Attorney General),* 2016 FC 16 at paragraph 34.
[27] See G*arvey* v *Canada (Attorney General)*, 2018 FCA 118 at paragraphs 7–11 and *Quadir v Canada (Attorney General),* 2018 FCA 21 at paragraph 14.
[28] See section 58(1)(c) of the DESD Act.
[29] The Federal Court has recommended such a review in decision called *Karadeolian v Canada (Attorney General)*, 2016 FC 165, at paragraph 10.