Citation: *JA v Canada Employment Insurance Commission*, 2025 SST 346

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

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

Decision under appeal:	General Division decision dated January 27, 2025 (GE-24-4119)

Tribunal member:	Glenn Betteridge
Decision date:	April 9, 2025
File number:	AD-25-151

Decision

[1] Leave (permission) to appeal is refused. The appeal won't go forward.

Overview

[2] J. A. is the Claimant. He wants permission to appeal a General Division decision. I can give him permission if his appeal has a reasonable chance of success.

[3] He was an instructor at a business college. He taught classes on-line. He taught two classes, over two days. Then he left the job.

[4] The General Division decided he voluntarily left (quit) his job but had a reasonable alternative to quitting when he did. He could have talked to the Vice President about the issues he was having. Because he didn't have just cause for quitting, he could not get benefits.[1]

[5] The Claimant argues the General Division made legal errors and important factual errors.

[6] Unfortunately for the Claimant, his appeal doesn't have a reasonable chance of success. So I can't give him permission to appeal.

Issue

[7] Does the Claimant's appeal have a reasonable chance of success?

I'm not giving the Claimant permission to appeal

[8] I read the Claimant's applications to appeal—his original application and the one he sent after I asked for more details.[2] I read the General Division decision. I reviewed

[1] See section 29(c) and 30(1) of the *Employment Insurance Act* (EI Act).
[2] See AD1 and AD1B. And see the Tribunal's letter to the Claimant asking for more information, dated March 6, 2024, which was sent by email.

the documents in the General Division file.[3] And I listened to the hearing recording.[4] Then I made my decision.

[9] For the reasons that follow, I'm not giving the Claimant permission to appeal.

The permission to appeal test screens out appeals that don't have a reasonable chance of success[5]

[10] I can give the Claimant permission to appeal if his appeal has a reasonable chance of success.[6] This means he has to show an **arguable ground of appeal** upon which his appeal **might succeed**.[7]

[11] I can consider four grounds of appeal, which I call **errors**.[8] The General Division

- used an unfair process or wasn't impartial (a procedural fairness error)
- didn't use its decision-making power properly (a jurisdictional error)
- made a legal error
- made an important factual error

[12] The Claimant's reasons for appeal set out the key issues and central arguments I have to consider.[9] Because the Claimant is representing himself, I will also look beyond his arguments when I apply the permission to appeal test.[10]

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[3] See GD2, GD3, and GD4.
[4] The General Division heard three appeals in one hearing. The hearing about this appeal lasted from approximately 6:30 to 30:00 of the recording.
[5] See *Paradis v Canada (Attorney General)*, 2016 FC 1282 at paragraph 32.
[6] See section 58(2) of the *Department of Employment and Social Development Act* (DESD Act).
[7] See *Osaj v Canada (Attorney General)*, 2016 FC 115.
[8] See section 58(1) of the DESD Act.
[9] See *Hazaparu v Canada (Attorney General)*, 2024 FC 928 at paragraph 13.
[10] The Federal Court has said the Appeal Division should not apply the leave to appeal test mechanistically and should review the General Division record. See for example *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.

There isn't an arguable case the General Division made a legal error

[13] The Claimant checked the box that says the General Division made an error of law.[11]

[14] The General Division makes a legal error when it ignores an argument it has to consider, doesn't give adequate reasons for its decision, misinterprets a law, uses an incorrect legal test, or doesn't follow a court decision it has to follow.

– The Claimant didn't explain or give reasons to support his arguments

[15] Under the Claimant's first "error of law" heading, he refers to many paragraphs of the General Division decision, saying the member "acknowledged" or "stated" some fact.[12] But he doesn't explain why the General Division made an error of law in any of those paragraphs.

[16] It seems he's rearguing his case based on parts of the decision he likes or agrees with. But he hasn't shown the General Division made a legal error in the paragraphs he refers to.

– The General Division didn't have to use occupational health and safety law

[17] The Claimant argues General Division made a legal error because it should have used Ontario's *Occupational Health and Safety Act* (OHSA).[13] He says that law gives him the right to refuse unsafe, unhealthy work. He says this is an example of the General Division making an error by applying the EI Act but not the other law.

[18] I don't accept the Claimant's argument. It doesn't show an arguable case the General Division made a legal error, or his appeal has a reasonable chance of success, for five reasons.

- First, under section 29(c) of the EI Act, the General Division had to consider the evidence about his circumstances. It did that (paragraphs 24 to 35). Then

[11] See AD1B-4.
[12] See AD1-2 and AD1-3, referring to the following paragraphs in the General Division decision: 3, 4, 5, 6, 12, 15, 24, 26, 27, 30, 32, and 41.
[13] See AD1-4.

it had to make findings of fact about the circumstances that existed at the time he quit. It did that (paragraph 41). Finally, it had to decide whether he had a reasonable alternative to quitting in those circumstances. It did that (paragraphs 42 to 48).

- Second, the General Division considered whether his working conditions constituted a danger to his health or safety (paragraphs 30, 46, and 47).[14] It found he hadn't shown the situation was so bad he could not continue working (paragraph 46).

- Third, this is a new argument. The Claimant didn't make his "right to refuse unsafe work" under the OHSA argument at the General Division. This means the General Division didn't make a legal error by not considering this argument. It didn't have to consider an argument he didn't make.

- Fourth, while there is a right to refuse unsafe work under the OHSA, the law sets out a process an employee has to follow when refusing unsafe work. There was no evidence about that at the General Division. In other words, there was no evidence he used this right.

- Fifth, the right to refuse work is just that—to **refuse to work as long as** an employee faces dangerous circumstances. It isn't a right to quit. That doesn't automatically show just cause for **quitting a job** and ending the employment relationship under the EI Act. So even if the Claimant had shown he had the right to refuse work, the General Division still had to consider whether he had a reasonable alternative to quitting. And he did. He could have discussed the issues with the Vice President.[15]

[14] This circumstance is in section 29(c)(iv) of the EI Act.
[15] See *Canada (Attorney General) v Hernandez*, 2007 FCA 320, which involved an employee who quit because he said he feared dangerous working conditions.

[19] I reviewed the General Division decision. The General Division set out the correct legal tests for voluntary leaving and for just cause (paragraphs 13, 21 to 23). Then it used those tests. And its reasons are adequate.

– Summary

[20] The Claimant hasn't shown there is an arguable case the General Division made a legal error. And I didn't find an arguable case.

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

[21] The Claimant checked the box that says the General Division made an important error of fact.

[22] 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.[16] I can presume the General Division reviewed all the evidence—it doesn't have to refer to every piece of evidence.[17]

– The General Division didn't ignore evidence the Claimant was racially attacked

[23] The Claimant says the General Division made an error in paragraph 29 when it wrote: "Further, the Appellant says the students were being abusive towards him. They shouted at him, refused to listen to him, and were just generally disrespectful." He says that's not accurate because he testified, "One of the students racially attacked me in the classroom."[18]

[24] I can't accept the Claimant's argument. There isn't an arguable case the General Division ignored or misunderstood the Claimant's evidence.

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[16] 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.
[17] See *Sibbald v Canada (Attorney General)*, 2022 FCA 157 at paragraph 46.
[18] See AD1-3.

[25] The Claimant never used the phrase "racially attacked." Here is his sworn testimony about one student's problematic behaviour:

> I am feeling being disrespectfully treated in many ways she just kept on going… she kinda like touched on race, she touched on different things and said you have no qualifications to teach, how come you are even a teacher, those kinda things.[19]

[26] This was the only time he said anything about race (or racism or racial) in his testimony. And he didn't say anything about this in his reconsideration request or reasons for appeal.[20]

[27] I presume the General Division was aware of this evidence when it set out and weighed the Claimant's evidence about the students' bad behaviours (paragraphs 5, 29, and 46) The General Division uses the word "abusive" and "disrespectful." And it accepted the students were treating the Claimant poorly (paragraph 41).

[28] The fact the General Division didn't use the word "race" in its decision doesn't show the Claimant's appeal has a reasonable chance of success. It doesn't make me doubt the General Division's conclusion it was reasonable for him to speak with the Vice President about the students' behaviour rather than quitting after teaching two classes on-line.

– **The Claimant's other arguments don't show the General Division ignored or misunderstood his evidence**

[29] The Claimant says the General Division didn't recognize these things:

- The college was only communicating with him by email, except for his interview.
- He lost hope the employer would resolve his issues.
- The Vice President may or may not have helped him.

[19] Listen to the recording of the General Division hearing from 17:00 to 18:04.
[20] See GD3-43 to GD3-59, and GD2-18 to GD2-22.

- He felt the Vice President's email to him could have been "more responsible" since it only offered a call to discuss the issues he was having and asked whether his email meant "he was no longer working for us."

- The Vice President mentioned resigning in her email, so he felt it was her intention for him to resign, but his intention wasn't to resign from the job initially.

[30] The General Division didn't ignore the Vice President brought up resigning in her email and asked him to confirm whether he was resigning. It recognized this evidence (paragraph 16). And it didn't misunderstand it.

[31] The much more relevant fact was the Claimant confirmed he was resigning, which showed he chose to quit (paragraphs 17 and 18).

[32] The other evidence the Claimant points to is speculative, irrelevant to the legal test, or both. And none of the Claimant's arguments make me doubt the General Division's two key findings. It found the Claimant quit. And it found he had a reasonable alternative in the circumstances. In other words, under the EI Act he had a responsibility to accept the Vice President's offer to speak on the phone to try to resolve the issues he raised, rather than quitting when he did.[21]

[33] I reviewed the documents before the General Division and listened to the hearing. The evidence supports the General Division's decision. There is no evidence that directly contradicts either of the General Division's key findings.

– Summary

[34] The Claimant hasn't shown an arguable case the General Division based its decision on a factual error. And I didn't find an arguable case.

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[21] See *Canada (Attorney General) v Hernandez*, 2007 FCA 320.

Conclusion

[35] The Claimant hasn't shown an arguable case the General Division made an error that might change the outcome in his appeal. And I didn't find an arguable case.

[36] This tells me his appeal doesn't have a reasonable chance of success. So I can't give him permission to appeal the General Division decision.

Glenn Betteridge
Member, Appeal Division