



Citation: *KS v Canada Employment Insurance Commission*, 2025 SST 391

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: K. S.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated March 25, 2025
(GE-25-493)

Tribunal member: Glenn Betteridge

Decision date: April 15, 2025

File number: AD-25-234

Decision

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

Overview

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

[3] The General Division found he voluntarily left (quit) his job with a pharmaceutical company. And it found he had reasonable alternatives to quitting in the circumstances. So it decided he could not get Employment Insurance (EI) benefits because he didn't have just cause for quitting.

[4] He argues the General Division made jurisdictional, legal, and important factual errors. He says he didn't voluntarily leave his job, his employer constructively dismissed him. He says he had just cause for quitting. The alternatives the General Division calls reasonable were either impractical or non-existent in his circumstances.

[5] I can give the Claimant permission to appeal the General Division decision if his appeal has a reasonable chance of success. Unfortunately, it doesn't.

Issue

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

I can't give the Claimant permission to appeal

[7] I read the Claimant's application to appeal.¹ I read the General Division decision. I reviewed the documents in the General Division file.² And I listened to the hearing recording.³ Then I made my decision.

¹ See AD1.

² See GD2, GD3, GD4, GD6, GD7, and GD8.

³ The hearing lasted approximately one hour and forty-five minutes.

[8] The *Employment Insurance Act* (EI Act) pays benefits to people who are **involuntarily** unemployed.⁴

[9] The General Division recognized the Claimant had good cause for leaving his job (paragraph 52). But he had to show just cause under section 29(c) of the EI Act. The General Division decided he didn't show just cause because he had reasonable alternatives he didn't try before quitting. These reasonable alternatives meant he wasn't involuntarily unemployed.

[10] The Claimant hasn't shown an arguable case the General Division made an error. And I didn't find an arguable case.

[11] For these reasons and the reasons that follow, I can't give the Claimant permission to appeal.

The permission to appeal test screens out appeals that don't have a reasonable chance of success⁵

[12] 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

[13] 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

⁴ See *Canada (Canada Employment and Immigration Commission) v Gagnon*, [1988] SCR 29.

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.

[14] 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

[15] The Claimant argues the General Division made jurisdictional, legal, and important factual errors.

[16] The Claimant's doesn't explain why the General Division made a jurisdictional error. And I didn't find an arguable case the General Division made that type of error. The General Division correctly identified the issues it had to decide (paragraphs 8 and 9). Then it decided only those issues.

[17] In the rest of my decision, I will consider whether the General Division made a legal error or an important factual error.

– **What counts as a legal error and an important factual error**

[18] 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, or uses an incorrect legal test.

[19] 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.¹¹ Relevant means relevant to the legal test. It's the General Division's job to review and weigh the evidence.¹² I can't re-weigh the evidence or substitute my view of the facts.

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.

¹¹ Section 58(1)(c) of the DESD Act says it's 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.

¹² See *Tracey v Canada (Attorney General)*, 2015 FC 1300 at paragraph 33.

No arguable case the General Division made an error when it decided the Claimant voluntarily left (resigned or quit)

[20] The Claimant argues the General Division made an error when it decided he voluntarily left his job.¹³ He says his resignation wasn't voluntary, he resigned under duress. The General Division should have recognized his situation as a constructive dismissal.

[21] There isn't an arguable case the General Division made an error when it decided he voluntarily left (quit or resigned) (paragraphs 10 to 16).

– Legal error

[22] The General Division set out the correct legal test, from the court decision in *Peace* (paragraph 11). Then it applied that test (paragraphs 14 and 15).

[23] The General Division didn't ignore the Claimant's argument he left under duress because of untenable working conditions (paragraph 12). But the *Peace* decision says "constructive dismissal" is a common law concept different from voluntary leaving under the EI Act.¹⁴ In other words, the General Division could not base its decision on constructive dismissal.

[24] The General Division explained this difference to the Claimant at the hearing.¹⁵ Then it explained the test for just cause under section 29(c) of the EI Act includes "all the circumstances." In its decision, the General Division correctly wrote it had to "consider the issues the Appellant raised about leaving under duress" when it considered whether he had just cause or a reasonable alternative to quitting (paragraph 16).¹⁶

¹³ See AD1-8.

¹⁴ See *Canada (Attorney General) v Peace*, 2004 FCA 56 at paragraphs 13 to 15.

¹⁵ Listen to the General Division hearing recording at 7:18 to 8:44.

¹⁶ See *Canada (Attorney General) v Peace*, 2004 FCA 56 at paragraph 16.

– **Important factual error**

[25] The General Division didn't make an important factual error when it decided he had a choice, and he chose to quit.

[26] The General Division didn't ignore or misunderstand relevant evidence. It cited the Claimant's testimony that he had a choice and chose to leave (paragraph 15).¹⁷ That testimony is supported by his appeal notice where he writes "my resignation" and repeats the word "resignation."¹⁸ This shows me the relevant evidence supports the General Division's finding he voluntarily left.

No arguable case the General Division made an error when it decided the Claimant didn't have just cause for leaving

[27] The Claimant says the General Division made the following errors when it decided he didn't have just cause for quitting because he had reasonable alternatives.¹⁹

- dismissed the GMP data deletion and toxic work culture
- ignored or misstated he applied for over 40 jobs before quitting, and relocated 1,400 km for new employment, demonstrating financial desperation
- didn't accept he had shown regulatory violations, moral injury, and a significant change in work duties
- didn't recognize the alternatives presented were either impractical or non-existent
- ignored binding jurisprudence that persistent employer misconduct, regulatory violations, and psychological harm constitute intolerability
- conflated good cause with just cause

¹⁷ Listen to the General Division hearing recording at 1:26:40.

¹⁸ See GD2-7.

¹⁹ See AD1-8 to AD1-10.

[28] First I will consider the Claimant's argument about important factual errors—the first four bullets. Then I will consider his legal error arguments—the last two bullets.

– **Important factual error**

[29] There's no arguable case the General Division based its decision on an error about the relevant facts.

[30] The General Division accepted the Claimant felt under duress due to untenable working conditions (paragraph 15). Then it reviewed and weighed his evidence and made findings about the four section 29(c) circumstances he claimed (paragraphs 24 to 37). The General Division didn't use the work toxic. But it reviewed and weighed the evidence about whether his working conditions were intolerable (paragraphs 43 and 45).

[31] The General Division thoroughly considered his employer's allegedly illegal practices (GMP data handling), without ignoring or misunderstanding any relevant evidence (paragraphs 33 to 35). And it found within the complex regulatory framework, the Claimant hadn't brought forward enough evidence to show the employer's practices were illegal (paragraphs 37 and 38).

[32] The General Division considered the Claimant's evidence he had been unable to secure another position within the company (paragraph 41, 4th bullet).²⁰ And it considered his evidence it was hard to find another job while employed, and he had been unsuccessful doing that (paragraph 41, 5th and 6th bullets).

[33] The General Division didn't make a mistake when it left out "40" job applications. I can presume it was aware of that number, but didn't focus on it because it didn't use looking for another job as a reasonable alternative. In other words, the number of job applications wasn't relevant to the General Division's decision.

[34] The General Division didn't have to consider the Claimant moved for work after he quit. The legal test is about circumstances that existed **at the time** he quit. So the

²⁰ The Claimant wrote his 40 job applications were internal, see GD8-6.

fact he accepted work 1,400 km away and his financial circumstances weren't legally relevant.

[35] The General Division didn't have to accept the Claimant's position about regulatory violations and a significant change in work duties. It had to consider his evidence, and the Commission's evidence, and decide whether those circumstances existed. And this is what it did for these two section 29(c) circumstances (paragraphs 29 to 37).

[36] The General Division didn't have to consider evidence of "moral injury" because he didn't raise that argument.²¹ The General Division considered what he said about feeling humiliated and being under great stress (paragraphs 38, 9th bullet, and 41, 8th bullet).

[37] The General Division didn't have to accept the Claimant's subjective belief the alternatives were impractical or non-existent, or the alternatives weren't satisfactory to him. The General Division made this last point (paragraph 44).

[38] Under section 29(c) the General Division had to decide whether he had objectively reasonable alternatives in the circumstances that existed. The General Division considered the Claimant's and Commission's evidence and arguments about alternatives to quitting (paragraphs 41 to 43). Then without ignoring or misunderstanding any relevant evidence, it decided he had reasonable alternatives because his workplace situation wasn't intolerable (paragraphs 45 to 50).

[39] I appreciate the situation felt intolerable to the Claimant. But the legal test focuses on reasonable alternatives in the circumstances, assessed based on the evidence.

²¹ He didn't raise it in his reconsideration request (GD3-42), appeal notice (GD2), or post-hearing documents (GD7 and GD8).

– **Legal error**

[40] There's no arguable case the General Division made a legal error when it considered and decided the just cause issue.

[41] The Claimant argues the General Division didn't follow binding jurisprudence. But he didn't cite any. And I don't see where the General Division conflated just cause and good cause. The General Division's reasons show me it correctly understood the law distinguishes good cause and just cause, then applied that law (paragraphs 18 and 52).

[42] The General Division set out the legal test it had to use to decide the Claimant's appeal (paragraphs 10, 11, and 18 to 22). Then it used that test.

[43] The General Division's reasons are more than adequate.²² It grappled with the right questions. It considered the parties' evidence and arguments it had to consider. And its reasons add up.

– **Summary**

[44] The Claimant hasn't shown an arguable case the General Division made a legal error or an important factual error in the just cause part of its decision. And I didn't find an arguable case of either type of error.

Conclusion

[45] 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.

[46] 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

²² See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211; and *Sennikova v Canada (Attorney General)*, 2021 FC 982 at paragraphs 62 and 63.