[TRANSLATION]

Citation: *LL v Canada Employment Insurance Commission*, 2024 SST 997

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	L. L.
Representative:	F. L.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated August 1, 2024 (GE-24-1421)

Tribunal member:	Pierre Lafontaine
Decision date:	August 21, 2024
File number:	AD-24-531

Decision

[1] Permission to appeal is refused. The appeal won't proceed.

Overview

[2] The Applicant (Claimant) left her job and applied for Employment Insurance (EI) benefits. The Respondent (Commission) looked at the Claimant's reasons for leaving. The Commission decided that she voluntarily left (or chose to quit) her job without just cause. So, it could not pay her benefits.

[3] The Claimant asked the Commission to reconsider this decision. But it upheld its initial decision. The Claimant appealed the reconsideration decision to the Tribunal's General Division.

[4] The General Division found that the Claimant voluntarily left her job. It found that the Claimant had reasonable alternatives to leaving when she did. She could have gone to her union, looked for another job before leaving the one she had, or consulted a doctor to get a medical note justifying her inability to work.

[5] The Claimant is now asking the Appeal Division for permission to appeal the General Division decision. She says that the General Division didn't consider all the evidence and that she had good cause for leaving her job.

[6] I am refusing permission to appeal because the Claimant hasn't raised a ground of appeal based on which the appeal has a reasonable chance of success.

Issue

[7] Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

Analysis

[8] The law specifies the only grounds of appeal of a General Division decision.[1] These reviewable errors are the following:

1. The General Division hearing process wasn't fair in some way.
2. The General Division didn't decide an issue it should have decided. Or, it decided something it didn't have the power to decide.
3. The General Division based its decision on an important error of fact.
4. The General Division made an error of law in making its decision.

[9] An application for permission to appeal is a preliminary step to a hearing on the merits. It is an initial hurdle for the Claimant to meet, but it is lower than the one that must be met at the hearing of the appeal on the merits. At the permission to appeal stage, the Claimant doesn't have to prove her case; she must instead establish that her appeal has a reasonable chance of success. In other words, she must show that there is arguably some reviewable error based on which the appeal might succeed.

[10] I will give permission to appeal if I am satisfied that at least one of the Claimant's stated grounds of appeal has a reasonable chance of success.

I am not giving the Claimant permission to appeal

[11] The Claimant argues that she never refused to wear an N-95 mask and that the employer disrespected her, given her seniority. She has always been an excellent employee and was well liked by families. The Claimant argues that she was transferred without warning to floor 3000, where half of the residents had COVID-19, increasing the risks to her health.

[12] The Claimant argues that the employer assigned her exclusively to cleaning work on floor 3000 on March 13, 2023, during her notice period ending on March 18, 2023.

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[1] See section 58(1) of the *Department of Employment and Social Development Act*.

The work was difficult, which resulted in a lumbar strain. After spending the day cleaning, she decided that March 13, 2023, was her last day of work.

[13] The issue before the General Division was whether the Claimant voluntarily left her job without just cause.[2] This must be determined based on the circumstances that existed when she left.

[14] The General Division found that the Claimant voluntarily left her job. It found that the Claimant had reasonable alternatives to leaving when she did. She could have gone to her union, looked for another job before leaving the one she had, or consulted a doctor to get a medical note justifying her inability to work.

[15] In support of her application for benefits, the Claimant testified that she left her job after her employer told her she had to wear an N-95 mask. The Claimant didn't like her director's tone and lack of respect and decided to leave. She submitted her resignation letter on March 8, 2023. But she offered to continue working until March 18, 2023.

[16] After her notice of resignation, the employer assigned her to floor 3000 without giving her advance notice of this change or any explanation. She had to do maintenance work on floor 3000, when half of the residents on that floor had COVID-19. After her day on March 13, 2023, the Claimant decided to leave before the end of her notice period, since the work assigned was too difficult and involved a huge task given the poor state of floor 3000.[3]

[17] I understand that the Claimant didn't appreciate her director's tone and attitude, given her many years of work for the employer. But, as the General Division pointed out, the Claimant had other options than to quit on March 8, 2023. She could have discussed the situation with her union, looked for another more suitable job, or discussed her health with a doctor or her employer.

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[2] In accordance with sections 29 and 30 of the *Employment Insurance Act*.
[3] See GD3-11.

[18] The Claimant admitted that she didn't go to her union. She didn't consult a doctor or discuss her medical situation with her employer before deciding to leave her job. The Claimant also didn't look for a more suitable job before she quit.

[19] It is well established that a claimant who is dissatisfied with their working conditions has to look for another job before quitting.[4] It is also established that, when a claimant relies on health reasons to leave their job, they have to discuss accommodations for their health problems with their employer before leaving their job.[5]

[20] I see no reviewable error made by the General Division. The evidence shows, on a balance of probabilities, that the Claimant voluntarily left her job and that she had reasonable alternatives to leaving. She could have gone to her union, discussed her health with her employer or a doctor, or looked for another more suitable job before leaving, which she didn't do.

[21] I am of the view that the General Division correctly stated the applicable legal test for voluntary leaving. It applied this test to the facts of this case and looked at whether, after considering all the circumstances, the Claimant had no reasonable alternative to leaving her job.

[22] As has often been said, the EI system was put in place to help workers who find themselves unemployed through no fault of their own, not to pay benefits to those who create their own unemployment situation when they had reasonable alternatives to avoiding this situation.

[23] I must also reiterate that an appeal to the Appeal Division isn't an opportunity for a claimant to reargue their case and hope for a different outcome. I find that the Claimant hasn't raised any issue of law, fact, or jurisdiction regarding her voluntary leaving that could justify setting aside the decision under review.

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[4] See *OP v Canada Employment Insurance Commission*, 2019 SST 675; and *DH v Canada Employment Insurance Commission*, 2015 SSTAD 954.
[5] See *Her Majesty the Queen v Dietrich*, Federal Court of Appeal, A-640-93.

[24] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for permission to appeal, I have no choice but to find that the appeal has no reasonable chance of success.

Conclusion

[25] Permission to appeal is refused. The appeal won't proceed.

Pierre Lafontaine
Member, Appeal Division