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FEDERAL COURT

Court File No.: T-543-24

BETWEEN:

SYED ALI NAQVI

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

APPLICATION FOR JUDICIAL REVIEW

IN RESPECT OF A DECISION MADE UNDER SOCIAL SECURITY TRIBUNAL OF CANADA and  
EMPLOYMENT INSURANCE COMMISSION

APPLICANT

SYED ALI NAQVI

3504 17 AVENUE NW

EDMONTON ALBERTA, T6L2N8

EMAIL : [s.alinaqvi@yahoo.ca](mailto:s.alinaqvi@yahoo.ca)

Phone : 403 650 0584

DEFENDENTS

ATTORNEY GENERAL OF CANADA/

JUSTICE DEPARTMENT OF CANADA

Prairie Region-Edmonton Office

211, 10199 – 101 Street

Edmonton AB T5J 3Y4

PHONE : 7804952983

FAX : 7804952964

EMAIL : [AGC\\_PGC\\_ALBERTA@JUSTICE.GC.CA](mailto:AGC_PGC_ALBERTA@JUSTICE.GC.CA)

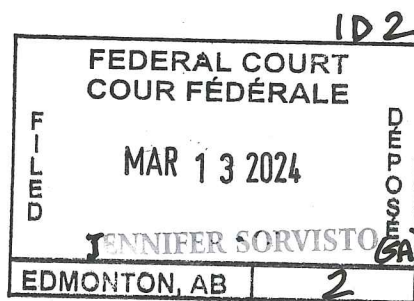


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APPLICATION FOR JUDICIAL REVIEW IN RESPECT OF A DECISION MADE UNDER SOCIAL SECURITY TRIBUNAL OF CANADA and EMPLOYMENT INSURANCE COMMISSION

NOTICE OF APPLICATION TO THE RESPONDENT

A PROCEEDING HAS BEEN COMMENCED by the applicant. The relief claimed by the applicant appears on the following pages.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at EDMONTON ALBERTA. (place where Federal Court ordinarily sits).

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by Federal Courts Rules and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the Federal Courts Rules, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Dated at city of Edmonton AB this.....day of March 12, 2021.

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Issued by: Registry Officer

Address of local office: Edmonton Local Office, Scotia Place,

Tower 1, Suit 530, 10060 Jasper Avenue,

PO Box 51, Edmonton Alberta T5J3R8

TO: ATTORNEY GENERAL OF CANADA / Department of Justice Canada

10423 101 Street NW, Edmonton, AB T5J 4Y8

AND

TO: [Social Security Tribunal of Canada PO BOX 9812 STATION T, OTTAWA ONTARIO K1G6S3

Email: [info.sst-tss@canada.gc.ca](mailto:info.sst-tss@canada.gc.ca)

AND

TO: WESTERN CANADA & TERRITORIES REGION SCC 4812 PO BOX 245, EDMONTON ALBERTA T5J 2J1

Phone: 18002067218 Enquiries

18005293742 (TTY)

Federal Court

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SYED ALI NAQVI

Applicant

and

ATTORNEY GENERAL OF CANADA /Department of Justice

Respondent

APPLICATION

NATURE OF APPLICATION

1- This is an application for judicial review according to Section 18.1 of the Federal Court Act. in respect of decision made under the Social Security Tribunal general division decision dated May 15, 2023 (GE-23-505) and Appeal division decision dated September 19, 2023 (FN-AD-23-544) & Employment insurance department decision dated January 25, 2023 (Record number: 565918), wherein they have concluded that applicant is not entitled for regular benefits because he had not availed other alternatives and resigned voluntarily without Just Cause.

RELIEF SOUGHT

- 2- The Applicant makes application for:
  - a. A declaration that the applicant is entitled to Employment Insurance regular benefits under the act.
  - b. An order setting aside the decision and ordering the social security and employment insurance department to pay the applicant regular benefits.
  - c. In the alternate to b., an order setting aside social security tribunal general and appeal divisions decisions for determination in

accordance with any declaration issued by the court in this application and such reasons and directions as the Court considers to be appropriate.

- d. Cost of the application and delay for award of regular benefits.
- e. Such further and other relief this Honourable Court deems just.

Causes/Grounds to leave the job Voluntarily.

- 3- To summarize, Social Security and Employment Insurance Commission has:
  - a. Acted beyond its jurisdiction in making the decision.
  - b. Erred in law in making the decision, whether or not the error appears on the face of the record.
  - c. Based its decision on an erroneous finding that is made in a perverse manner or without regard for material before it.
  - d. Or acted in any other way that was contrary to law.

More precisely, the grounds for the application are as follow.

- 4- The applicant passed successfully all the physical test required to get a job of Field Technologist in Terracon Geotechnique Ltd Fort McMurray and received necessary Health & Safety training.  
 Training for the use of Nuclear densometer to perform ground density tests was also given. It was told that its harmful to stay within 2-3 meters of range and that it kills the live cells of the body during its operation and that because new cells are also made so at certain level 2-3 meter its not harmful.  
 It was also told that people may get Silicosis because of Silica dust while working in the field. After successful training I was put on onsite field work. During the job I started losing my weight and lost 20 Lbs in 4.5 months. I started cough after approximately one month of work and it became persistent afterwards. In the month of August, I got Covid onsite and remained absent for ten days of unpaid leave. I started to work again but my cough did not finish completely and in September I got cold again which worsened and was later diagnosed with pneumonia, so due to worsening health conditions I had no other alternate except to resign.
- 5- Each day started with awake at 5:00am, catch the company bus at 6:00am to go to plant, shift started at 7:30am, get a company truck onsite, load working apparatus and head to work site in an open field and keep on travelling all day long at different sites till 7:30 pm and return back home at 9:00pm, so spending approximately 15 hours a day.
- 6- During 12 hours of shift, kept on performing 30-45 tests, loading and unloading nuclear radioactive equipment weighing 30 lbs, hammering with 20 lbs of hammer dozen times to perform a single test. Testing all day long in the severe cold, windy and chilly weather and silica sand environment on the oil sand mine. For a significant period of time I have to be within the dangerous zone of 2-3m performing tests with nuclear densometer.

- 7- My health was deteriorating day-by-day, and I was unable to perform my duties. Safety protocol by the company allows not to show up for work if not 100% fit. So, I was in bad shape of my health, me and my wife therefore decided that I should resign because working environment was not favourable.
- 8- During the four months I reminded the supervisor and manager to transfer me to a less hostile and other jobs but they never paid any attention to my reasonable requests and gave me a burden of additional projects in same tough environment. Infact they did not have another position other than field position. I therefore had no alternate except to resign and move back from Fort McMurray to Edmonton at my home to live with my wife for better look after and pay attention to my treatment. So I resigned on September 30, 2022 giving one weak notice.
- 9- The respondents did not consider any of the medical condition and working environment as stated above and rejected my application stating that I quit/voluntarily left, without "JUST CAUSE" and that I did not avail other reasonable alternates.

**ARGUMENTS:**

- 10- Relevant section 29(C) of the Employment Insurance Act and regulations reads as "Just Cause of voluntarily leaving an employment or taking a leave from an employment exists if the claimant had no reasonable alternate to leaving or taking leave, having regard to all the circumstances, including any of the following'.
- 11- '29C(ii) Obligation to accompany a spouse or common law partner or dependent child to another residence.'
- 12- My wife and me concluded that working anymore in the open field in unhealthy environment would be fatal for my health so I moved from Fort McMurray to Edmonton to my home to accompany my spouse and better look after. My wife also accompanied in the general appeal division hearing and witnessed about my poor health and told them that I moved because my health was in danger and I lost 20 Lbs of weight and got Covid and afterwards pneumonia on the site due to working in open field in dusty silica environment, frequent heavy weightlifting and hammering for soil testing all day long.
- 13- 29C(iv) Working condition that constitute a danger to health or safety
- 14- Working conditions such as cold in open field, silica dust, frequent heavy weightlifting, exposure to radiation while prolonged use of nuclear densometer longer 15 hours of shift 80km travel to site one way everyday and cold weather constituted significant danger to my health and my health was at risk, had I worked any more over there. I realised that significant weight loss and persistent cough was due to radiation exposure and Silica dust on construction sites.

- 15- Section 29C(viii) 'Excessive overtime work or refusal to pay overtime work'.
- 16- Compulsory 4 hours of over time was performed for every shift for straight 15-20 days straight and there was no excuse for it. I explained in my resignation that longer hours of work were also the reason to leave which were exhaustive and spoiled my health.
- 17- All the 3 Sub Sections and regulations explained above indicate that the resignation and voluntary leaving falls within the definition of **JUST CAUSE**.
- 18- The respondents were of the view that; **The applicant should have asked the Doctors before resigning.**
- 19- Although medical certificate is not needed as per above regulations, yet the applicant submitted all the notes of the Dr. Arnald Paul showing the dates of the visits to the Doctor which shows that the applicant had ongoing health issues and was under treatment.
- 20- Social Security tribunal and Ei Department did not respect the regulations and relevant sections of the Act and were shy of reverting the decision made by their colleagues.
- 21- General division disregarded the doctors' notes by saying that those cannot be read, if commission was not clear she should have asked more clear advice of the doctor, but general division gave no weight to Doctors notes. Even afterwards when a clear and concise medical certificate was submitted in the Appeal division of social security tribunal explaining that the applicant could not continue his job because of lung issues that was not also accepted.
- 22- Doctors notes and medical certificate show that the applicant was seriously sick for a prolonged period of time and can not be disregarded by any officer of the respondents.
- 23- The EI agent who first rejected my case, asked me whether I asked the Doctor before quitting, I told him that I was in miserable health condition and was concerned of my treatment only so I did not ask the Doctor, should I quit my job. Had the agent asked me to bring medical certificate, when the case was in its initial stage, I would have done it right away, which the Dr. Paul Arnald issued me in May 2023 before the Appeal division because I was under his treatment.

- 24- While inspecting my medical notes showing the dates of the visits to the Dr., General division's adjudicator did not apply his mind to assess the health conditions. I worked till October 03<sup>rd</sup>, 2022 and medical notes reflect that I was seriously sick again afterwards in December and in poor health condition and it was clear I was unable to work in field job even two months after resignation. But General division and Appeal division did not acknowledge the health issues and were not convinced regarding my declining health. Appeal division rejected it although it gave the clear-cut picture of the background of the sickness and highlighted medial condition and acted unfairly.
- 25- I did not want to carry any disability at the age of 65 for my rest of the life because of cold weather, silica sand and radiation exposure. I lost 20 pounds of weight and persistent cough and was pretty much convinced that at this age new cells are not made and old cells are being eaten up by radiation which resulted weight loss and serious illness.
- 26- **The applicant should have talked company for any other assignment.** The applicant reminded many times to the supervisor and manager and that request was never acceded to. As a matter of fact, company did not have any other assignment except field positions, and I informed in my resignation that I am resigning because of working environment and that this job was beyond my strength.
- 27- Terracon Geotechnique Ltd. HR representative Julia Falls wide his comments to the employment insurance representative explained that they have only Field jobs with them and that they have nothing else to offer, so it is evident that no other alternative was available except to resign and take care of my health.
- 28- **The Tribunal also asserted that more robust winter PPE should have been used.**
- 29- The Applicant was always in best possible PPE but those did not protect him due to harsh weather and Silica sand environment and radiation exposures.
- 30- The APPLICANT proved that the resignation and voluntary leaving was under just cause. If one is unable to perform duty because it is beyond his strength and there is no option except to work, he has the right to take care of himself and resign to avoid any lifelong hazard. The employer always asserted not to show up for work if not 100% fit. All these reasons were proved before the tribunal.

31- Social Security Tribunal and EI department ignored all the relevant clauses and asserted that other alternatives were not availed, and that the applicant should have applied for leave of absence. Leave of absence was taken at different occasions as well during work period of 4 months.

32- I tried my best to find any other job placement, told supervisor many times if any less hard job was there but never heard back. No Alternate was there except to work which was the result of my ailment and significant weight loss and serious illness.

33- I have discussed all the reasons to leave voluntarily within just Cause and each of them alone is sufficient to be accepted to approve my case.

### Request For Relief

It is therefore prayed that General Division and Appeal division decisions may kindly be set aside and Social Security Tribunal and EI department may kindly be advised to pay EI regular benefits.



SYED ALI NAQVI

3504 17 AVENUE NW EDMONTON AB

T6L2N8

EMAIL: s.alinaqvi@yahoo.ca

Cell: 403 650 0584

Dated: March 12, 2024