



Citation : *X v Canada Employment Insurance Commission and LW*, 2022 SST 310

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

**Applicant:** X

**Respondent:** Canada Employment Insurance Commission

**Added Party:  
Representative:** L. W.

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**Decision under appeal:** General Division decision dated January 17, 2022  
(GE-21- 2464)

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**Tribunal member:** Janet Lew

**Decision date:** February 23, 2022

**File number:** AD-22-69

## Decision

[1] Leave (permission) to appeal is refused because the appeal does not have a reasonable chance of success. The Employer will not be added as a party to the proceedings.

## Overview

[2] The Applicant, X (Employer), is appealing the General Division decision. The General Division found that the Employer failed to explain why it had a direct interest in the outcome of proceedings involving the Added Party, L. W. (Claimant), a former employee. Because the Employer failed to prove that it had a direct interest in the appeal, the General Division rejected the Employer's request to be added as a party to the Claimant's appeal.

[3] The Employer argues that the General Division erred in failing to add it as a party to the proceedings.

[4] I have to decide whether the appeal has a reasonable chance of success.<sup>1</sup> Having a reasonable chance of success is the same thing as having an arguable case.<sup>2</sup>

## Issue

[5] Is there an arguable case that the General Division overlooked some of the evidence?

## Analysis

[6] The Appeal Division must grant permission to appeal unless the appeal "has no reasonable chance of success." A reasonable chance of success exists if there is a

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<sup>1</sup> Under section 58(2) of the *Department of Employment and Social Development Act* (DESD Act), I have to refuse permission if I am satisfied, "that the appeal has no reasonable chance of success."

<sup>2</sup> See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

possible jurisdictional, procedural, legal, or certain type of factual error that the General Division made.<sup>3</sup>

[7] Once an applicant gets permission from the Appeal Division, they move to the actual appeal. There, the Appeal Division decides whether the General Division made an error. If the Appeal Division decides that the General Division made an error, it then decides how to fix that error.

### **Is there an arguable case that the General Division overlooked some of the evidence?**

[8] The Employer argues that the General Division should have added it as a party to the Claimant's appeal. The Employer suggests that the General Division overlooked the fact that it was the Claimant's employer.

[9] The Social Security Tribunal had issued a notice to the Employer.<sup>4</sup> The Tribunal noted that the Respondent, the Canada Employment Insurance Commission (Commission), had involved the Employer in its claims process. It had done so because it was the Claimant's employer. The Tribunal noted that, once the matter moved to the Tribunal stage, the Employer did not automatically continue to be involved in the process.

[10] The Tribunal advised the Employer that if it wished to be involved in the Tribunal process, it would need to be added as a party to the proceedings. However, the Employer would have to show that it had a direct interest in the appeal. This is because the *Social Security Tribunal Regulations* requires a person (who wants to be added as a party) to have a direct interest in the decision.<sup>5</sup>

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<sup>3</sup> See section 58(1) of the DESD Act. For factual errors, the General Division had to have based its decision on an error that had been made in a perverse or capricious manner, or without regard for the evidence before it.

<sup>4</sup> See Social Security Tribunal letter dated December 13, 2021, at GD5.

<sup>5</sup> See section 10(1) of the *Social Security Tribunal Regulations*.

[11] The Tribunal wrote:

It is possible for the Tribunal to add you as a party to the appeal. To do so, you must prove that you have a direct interest in the appeal.

. . .

If you do want to be added as a party, you must make a request to be added.

. . .

Your request must also explain why you believe that you have a direct interest in the decision.

It is up to the Tribunal member to review your request and decide whether you have a direct interest and, as a result, should be added as a party. So, your request should include any information that explains why you believe that you have a direct interest.

[12] The Employer responded. It wrote, “We have a direct interest in the decision as we were the employer of the [Claimant]”.<sup>6</sup>

[13] The General Division refused the Employer’s request to be added as a party to the proceedings. The General Division decided:

You state “[you] have a direct interest in the decision”, but do not explain why you believe this. The notice sent to you says that you won’t be added automatically to the appeal, but must prove that you have a direct interest in the appeal. Since you have not done so, your request to be added as a party is refused.<sup>7</sup>

[14] The Employer appeals this decision. The Employer notes that it was required to explain why it asked the Tribunal to add it as a party to the appeal. The Employer argues that it has a direct interest in the appeal because:

- It was the Claimant’s employer

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<sup>6</sup> See Employer’s email dated January 10, 2022.

<sup>7</sup> See General Division letter dated January 17, 2022.

- The Commission involved the Employer in its investigation into the Claimant.
- The Commission accepted that the Employer dismissed the Claimant from her employment because of misconduct.

[15] The Employer says that the General Division should have necessarily accepted that it had a direct interest in the appeal because it was the Claimant's employer.

[16] Likely, it appeared to the Employer that the General Division overlooked the fact that it was the Claimant's employer. After all, the General Division did not mention this fact in its decision.

[17] However, the General Division was already aware of this fact and had determined that the employer-employee relationship with the Claimant was an insufficient basis to add the Employer as a party to the proceedings. The General Division had to have been aware of this relationship because it referred to the Tribunal's letter of December 13, 2021, which noted the Employer's relationship to the Claimant.

[18] The Employer should have been aware that its relationship with the Claimant was, on its own, insufficient to establish a "direct interest". Otherwise, why would it have been necessary for the Tribunal to write to the Employer, inviting it to describe how it had a direct interest in the proceedings?

[19] But, even if, for some reason, the General Division had been unaware of or overlooked the Employer's relationship with the Claimant, this would not have changed its decision.

[20] The Federal Court of Appeal has provided some guidance about when a direct interest exists. The Court of Appeal gave this guidance in the context of the *Federal Court Rules* and the *Federal Courts Act*. A party has a "direct interest" when its legal rights are affected, legal obligations are imposed upon it, or it is prejudicially affected in

some direct way.<sup>8</sup> The fact that there was an employer-employee relationship, or the fact that the Employer had dismissed the Claimant from her employment, or even its involvement in the Commission's investigation, did not establish any "direct interest" in the outcome of the proceedings.

[21] The Employer simply did not produce any evidence to show what direct interest it had in the outcome of the appeal. Without any evidence to show its direct interest, the General Division had no alternative but to refuse the Employer's request to add it as a party to the proceedings.

[22] Clearly, the Employer wants to continue to be involved in the proceedings. Although the Employer is not a party to the proceedings, the parties could choose to call the Employer as a witness.

## **Conclusion**

[23] Permission to appeal is refused because the Employer does not have an arguable case. This means that the General Division decision stands. The Employer will not be added as a party to the proceedings.

Janet Lew  
Member, Appeal Division

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<sup>8</sup> See *Forest Ethics Advocacy Association v Canada (National Energy Board)*, 2013 FCA236.