



[TRANSLATION]

Citation: *EG v Canada Employment Insurance Commission*, 2022 SST 947

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: E. G.
Representative: Nicholas Teasdale

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated
August 12, 2022 (GE-22-443)

Tribunal member: Pierre Lafontaine

Decision date: September 27, 2022
File number: AD-22-667

Decision

[1] Leave (permission) to appeal is refused. The appeal will not proceed.

Overview

[2] The Applicant (Claimant) was a warehouse clerk. The employer indicated that the Claimant was let go for repeatedly being late and missing work and for abusing sick leave.

[3] The Respondent, the Canada Employment Insurance Commission (Commission), denied the Claimant benefits, since his employment ended because of his own misconduct. On reconsideration, the Commission upheld the initial decision. The Claimant appealed to the General Division.

[4] The General Division found that the Claimant lost his job after receiving many warnings for tardiness. It found that the Claimant could expect to be let go and that this is what caused him to lose his job. The General Division decided that the Claimant's tardiness, including on September 13, 2021, was misconduct under the law.

[5] The Claimant now seeks leave from the Appeal Division to appeal the General Division decision. He argues that the General Division made errors of fact and of law.

[6] I have to decide whether there is an arguable case that the General Division made a reviewable error based on which the appeal has a reasonable chance of success.

[7] I am refusing leave to appeal because the Claimant has not raised a ground of appeal based on which the appeal has a reasonable chance of success.

Issue

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

Analysis

[9] Section 58(1) of the *Department of Employment and Social Development Act* specifies the only grounds of appeal of a General Division decision. These reviewable errors are the following:

1. The General Division hearing process was not fair in some way.
2. The General Division did not decide an issue it should have decided. Or, it decided something it did not 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 when making its decision.

[10] An application for leave 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 leave to appeal stage, the Claimant does not have to prove his case; he must instead establish that the appeal has a reasonable chance of success—in other words, that there is arguably a reviewable error based on which the appeal might succeed.

[11] I will grant leave to appeal if I am satisfied that at least one of the Claimant's stated grounds of appeal gives the appeal a reasonable chance of success.

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

[12] In support of his application for leave to appeal, the Claimant argues that he started being late after the three-month lockdown. The lockdown disrupted his daily life and caused him sleep disorders. He talked to his doctor and a social worker regularly. He tried to negotiate accommodations with his employer to make up for lost time, but his employer refused to compromise. He always did a good job for his employer. He argues that the pressure and stress caused by his manager continued until he was let go. He submitted case law in support of his appeal.

[13] The General Division found that the Claimant lost his job after receiving many warnings for tardiness. It found that the Claimant could expect to be let go and that this is what caused him to lose his job. The General Division decided that the Claimant's tardiness, including on September 13, 2021, was misconduct under the law.

[14] The evidence before the General Division shows that the Claimant was let go because of the many times he was late. Also, the employer noted his tardiness several times, and he was repeatedly warned about it.

[15] On January 12, 2021, and June 3, 2021, the Claimant signed disciplinary warning letters related to his tardiness.¹ The employer imposed on him a two-day suspension without pay on June 3 and 4, 2021, because of his tardiness.

[16] The Claimant was informed that he could be let go if he was late again and his tardiness was not excused or authorized. He signed each warning letter.

[17] The Claimant was again late without being excused on July 17, 22, 28, and 30, 2021. On September 13, 2021, he showed up for work several hours late because he had been unable to wake up on time. Because of the repeated tardiness, he was let go that same day.

[18] As early as June 2021, the employer suggested that the Claimant use the company's telephone consultation service concerning his problems being on time for work. He declined. He preferred to continue using his own methods despite obvious difficulties following his work schedule.

[19] As the General Division pointed out, the Claimant needed to take the necessary action to resolve his tardiness issues and, in so doing, meet his obligations toward his employer. This is especially true given the employer's insistence that he be at work on time out of respect for the other employees.

¹ See GD3-40 and GD3-41.

[20] It has been established that tardiness, despite several warnings like those given in this case, is misconduct because it is careless and shows a lack of concern with respect to the employer.²

[21] I note that the settlement between the Claimant and his employer includes no implicit or explicit admission that the facts of the Claimant's case were wrong or did not correctly reflect the events as they happened.

[22] The settlement does not contain any retraction from the employer concerning the events that initially led to the Claimant's dismissal.³

[23] I find that the General Division decision is based on the evidence that was presented and on the applicable legislative provisions, as interpreted in the case law.

[24] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for leave to appeal, I find that the appeal has no reasonable chance of success. The Claimant has not raised any question of fact or law that could justify setting aside the decision under review.

Conclusion

[25] Leave to appeal is refused. The appeal will not proceed.

Pierre Lafontaine
Member, Appeal Division

² *Parsons v Canada (Attorney General)*, 2005 FCA 248.

³ *Canada (Attorney General) v Boulton*, 1996 FCA 1682; *Canada (Attorney General) v Morrow*, 1999 FCA 193.