



[TRANSLATION]

Citation: *AA v Canada Employment Insurance Commission*, 2022 SST 909

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

# **Leave to Appeal Decision**

**Applicant:** A. A.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated  
July 19, 2022 (GE-22-1218)

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**Tribunal member:** Pierre Lafontaine

**Decision date:** September 16, 2022

**File number:** AD-22-503

## Decision

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

## Overview

[2] The Applicant (Claimant) lost his job. He applied for Employment Insurance (EI) regular benefits. The Respondent (Commission) accepted the reason the employer gave for the dismissal—the Claimant refused an assignment to another position. It found that the Claimant had been let go because of misconduct. The Commission therefore disqualified him from receiving EI benefits. The Claimant requested a reconsideration of that decision. The Commission denied his reconsideration request. The Claimant appealed to the General Division.

[3] The General Division found that the Claimant had refused his employer's assignment to another position. It found that the Claimant knew or should have known that the employer would likely let him go in these circumstances. The General Division found that this was the reason for his dismissal. It found that the Claimant was let go because of misconduct.

[4] The Claimant seeks leave from the Appeal Division to appeal the General Division decision. He argues that he had asked the General Division an important question at the hearing. He argues that the General Division decision does not mention it at all.

[5] Before deciding on his application for leave to appeal, I asked the Claimant to give me detailed reasons for his appeal. The Claimant did not reply within the allowed time.

[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 that 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 has to 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. Instead, he has to establish that the appeal has a reasonable chance of success. In other words, he has to show 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] The Claimant argues that he had asked an important question at the hearing. He argues that the General Division's decision does not mention it at all.

[13] I have listened to the recording of the General Division hearing. The Claimant asked why his employer behaved this way towards him after working there for 15 years. The Claimant asked the employer to provide concrete evidence that he could not have the other position in his department.

[14] The role of the General Division is to examine the parties' evidence, to determine the relevant facts related to the issue that is before it, and to make its own independent written decision on the matter.

[15] The Claimant worked for the employer for over 15 years as a machine operator. On October 22, 2021, he was let go after refusing his employer's assignment to another position.

[16] The Commission had to decide whether the Claimant had been let go because of misconduct.

[17] The notion of misconduct does not imply that the breach of conduct needs to be the result of wrongful intent; it is enough that the misconduct be conscious, deliberate, or intentional.

[18] In other words, to be misconduct, the act complained of must have been wilful or at least of such a careless or negligent nature that you could say the person wilfully disregarded the effects their actions would have on their performance.

[19] As the General Division pointed out, its role is not to rule on the severity of the employer's penalty or to determine whether the employer was guilty of misconduct by dismissing the Claimant in such a way that his dismissal was unjustified. Its role is to

determine whether the Claimant was guilty of misconduct and whether this misconduct led to his dismissal.<sup>1</sup>

[20] The General Division found that the Claimant had refused the employer's assignment to another position. It found that the Claimant knew or should have known that the employer would likely let him go in these circumstances. The General Division found that this was the reason for his dismissal. It found that the Claimant was let go because of misconduct.

[21] The General Division took into account the evidence showing, on a balance of probabilities, that the Claimant got several disciplinary reports and warnings, notably for insubordination. His employer held a meeting on October 22, 2021, where it told him that refusing to work again would lead to his dismissal. He was given verbal and written warnings that he would be let go if he refused the next assignment. On October 25, 2021, he refused the assignment again. The employer let the Claimant go.

[22] The General Division took into account the evidence showing, on a balance of probabilities, that the employer had the right under the collective agreement to transfer the Claimant to another department when there was a shortage of work. It noted that the Claimant kept his benefits even though the position he was assigned to paid less.

[23] Concerning a possible assignment to a colleague's position in the Claimant's department, the General Division gathered information given by the union and the employer showing that the Claimant was not able to take on the position in question.

[24] The General Division found, on a balance of probabilities, that the Claimant's behaviour constituted misconduct.

[25] Case law has established that employees are generally required to carry out tasks assigned by the employer, unless they are dangerous, illegal, or unreasonable.

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<sup>1</sup> *Canada (Attorney general) v Lemire*, 2010 FCA 314.

The evidence does not support a conclusion that the tasks were dangerous, illegal, or unreasonable.

[26] It is well established that the Appeal Division does not have the authority to retry a case or to substitute its discretion for that of the General Division. The Appeal Division's jurisdiction is limited by the law.

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

## **Conclusion**

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

Pierre Lafontaine  
Member, Appeal Division