



Citation: *JP v Canada Employment Insurance Commission*, 2022 SST 944

**Social Security Tribunal of Canada
Appeal Division**

Leave to Appeal Decision

Applicant: J. P.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated July 21, 2022
(GE-22-1774)

Tribunal member: Pierre Lafontaine

Decision date: September 27, 2022

File number: AD-22-666

Decision

[1] Permission to appeal is refused. This means the appeal will not proceed.

Overview

[2] The Applicant (Claimant) lost her job. The Claimant's employer said that she lost her job because she took money from a colleague's purse and this destroyed the employment relationship.

[3] The Respondent (Commission) accepted the employer's reason for dismissal. It decided that the Claimant lost her job because of misconduct and disqualified her from receiving Employment Insurance (EI) benefits. The Claimant requested reconsideration but the Commission maintained its original decision. The Claimant appealed to the General Division.

[4] The General Division found that the Claimant lost her job after she was caught stealing from another employee's purse. It found that the Claimant should have known that the employer was likely to dismiss her in these circumstances. The General Division concluded that the Claimant lost her job because of her misconduct.

[5] The Claimant seeks leave to appeal of the General Division's decision to the Appeal Division. She feels the General Division did not explain a question clearly to her during the hearing regarding her grievance.

[6] I must decide whether the Claimant has raised some reviewable error of the General Division upon which the appeal might succeed.

[7] I refuse leave to appeal because the Claimant's appeal has no reasonable chance of success.

Issue

[8] Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

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 that:

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 must be met on the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove her case but must establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, that there is arguably some reviewable error upon which the appeal might succeed.

[11] Therefore, before I can grant leave to appeal, I need to be satisfied that the reasons for appeal fall within any of the above-mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success.

Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

[12] The Claimant seeks leave to appeal of the General Division's decision to the Appeal Division. She submits that the General Division did not explain a question clearly to her when it asked whether she would return to her employer if she won her grievance. She puts forward that her last place of work would not want her to continue working there anymore but that she would accept to return to a different establishment to make a fresh start.¹

[13] The General Division had to decide whether the Claimant had lost her employment because of her own misconduct **based on the evidence before it**. The General Division could not presume the outcome of the grievance in order to decide the issue of misconduct.

[14] The notion of misconduct does not imply that it is necessary that the breach of conduct be the result of wrongful intent; it is sufficient that the misconduct be conscious, deliberate, or intentional. In other words, in order to constitute misconduct, the act complained of must have been wilful or at least of such a careless or negligent nature that one could say the employee wilfully disregarded the effects their actions would have on their performance.

[15] The General Division's role is not to judge 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 this dismissal was unjustified, but rather of deciding whether the Claimant was guilty of misconduct and whether this misconduct led to the loss of his employment.

[16] Based on the evidence before it, the General Division determined that the Claimant lost her job after she was caught stealing from another employee's purse. It found that the action that caused the employment contract to be broken was such of a carelessness nature that the Claimant acted wilfully. The General Division concluded that the Claimant's behavior constituted misconduct under the *Employment Insurance Act* (EI Act).

¹ See AD1-4.

[17] Unfortunately, for the Claimant, the fact that she acted impulsively and had a momentary lapse of judgment because she was under considerable stress in her private life is of no relevance to decide whether her own conduct constitutes misconduct under the EI Act. In acting as she did, the Claimant ought to have known that her conduct was such that it might lead to her dismissal.²

[18] In her application for leave to appeal, the Claimant has not identified any reviewable errors such as jurisdiction or any failure by the General Division to observe a principle of natural justice. She has not identified errors in law nor identified any erroneous findings of fact, which the General Division may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision.

[19] After reviewing the docket of appeal, the decision of the General Division and considering the arguments of the Claimant in support of her request for leave to appeal, I find that the appeal has no reasonable chance of success.

Conclusion

[20] Permission to appeal is refused. This means the appeal will not proceed.

Pierre Lafontaine
Member, Appeal Division

² *Canada (Attorney General) v Caul*, 2006 FCA 251.