



Citation: *LY v Canada Employment Insurance Commission*, 2022 SST 1307

## Social Security Tribunal of Canada Appeal Division

# Decision

**Appellant:** L. Y.  
**Representative:** M. Y.

**Respondent:** Canada Employment Insurance Commission  
**Representative:** Josée Lachance

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**Decision under appeal:** General Division decision dated September 1, 2022  
(GE-22-2229)

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**Tribunal member:** Janet Lew

**Type of hearing:** On the Record  
**Decision date:** November 15, 2022  
**File number:** AD-22-684

## Decision

[1] The appeal is allowed. The matter will go back to a different member of the General Division for reconsideration.

## Overview

[2] This is an appeal of the General Division decision. The General Division summarily dismissed the appeal of the Appellant, L. Y. (Claimant). The General Division found that the Claimant had been placed on a leave of absence without pay and then dismissed her from her employment for misconduct. As a result, she was disqualified from receiving Employment Insurance benefits.

[3] The General Division did not hold a hearing to address the misconduct issue. The General Division found that it would have made no difference if the Claimant had presented new evidence and made other arguments. The General Division determined that the Claimant's appeal had no reasonable chance of success in that the appeal was bound to fail.

[4] The Claimant argues that the General Division made procedural, legal, and factual errors. She argues that she should have had an opportunity to be heard at the General Division. She denies that there was any misconduct. For instance, she says that there was no misconduct based on her collective agreement.

[5] The Respondent, the Canada Employment Insurance Commission (Commission), accepts that the General Division erred in law in summarily dismissing the Claimant's appeal. The Commission says that appeals of misconduct cases are not clearly bound to fail, so the General Division should not have summarily dismissed the Claimant's appeal.

## Issue

[6] The issue in this appeal is: Did the General Division make an error by summarily dismissing the Claimant's appeal?

## Analysis

[7] The Appeal Division may intervene in General Division decisions if there are jurisdictional, procedural, legal, or certain types of factual errors.

### **Did the General Division make an error by summarily dismissing the Claimant's appeal?**

[8] The General Division determined that the Claimant did not comply with her employer's COVID-19 vaccination policy, that she had been aware of the policy and that she could lose her employment if she did not comply, and that her non-compliance led to her dismissal.

[9] The General Division found that the Claimant's actions amounted to misconduct. The General Division also found that there was no evidence that the Claimant could have presented at a hearing to change the outcome of her appeal.

[10] The General Division referred to section 53(1) of the *Department of Employment and Social Development Act*. The section requires the General Division to summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success.

[11] The General Division found that it was clear from the record that the Claimant's appeal did not have any reasonable chance of success and that her appeal was bound to fail. For that reason, it summarily dismissed the Claimant's appeal.

[12] The Commission notes that the Federal Court of Appeal has held that an appeal should be summarily dismissed only when it is obvious that the appeal is bound to fail no matter what evidence or arguments might be presented at a hearing.<sup>1</sup>

[13] The Commission argues that the Claimant's case is unlike those in which an applicant does not meet the qualifying conditions, has insufficient insurable hours, or

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<sup>1</sup> See Commission's representations to the Social Security Tribunal – Appeal Division, filed on November 2, 2022, at AD 2-3, citing *Lessard-Gauvin v Canada (Attorney General)*, 2013 FCA 147.

has reached the maximum number of weeks paid for sickness benefits. The Commission says that those types of appeals are clearly bound to fail.

[14] The Commission argues that appeals of misconduct cases are not clearly bound to fail because an appellant might submit evidence or make arguments at a hearing that could alter the outcome.

[15] The Commission argues that, in effect, the General Division decided the case on the record when it decided that the appeal has no reasonable chance of success. But, the Commission notes, the Employment Insurance Section of the General Division does not have any authority to decide cases on the record. The Commission says that the general rule is that appellants must be given an opportunity to be heard.

[16] The Commission argues that the General Division used the summary dismissal procedure to disguise what it is not permitted to do. The Commission argues that the General Division should not be using the summary dismissal procedure to circumvent the general rule for Employment Insurance cases that appellants be given the chance to be heard.

[17] The Commission submits that, in the context of the summary dismissal procedure, it is inappropriate for the General Division to consider a case on its merits in the parties' absence and then find that the appeal has no reasonable chance of success.

[18] Indeed, the Claimant has raised several arguments. She has not had an opportunity to fully address these arguments.

[19] I accept the parties' arguments that the General Division erred in summarily dismissing the appeal when there was a reasonable chance of success. The General Division should not have relied on the procedure as a means to give a decision on the record, in light of the Claimant's evidence and arguments and the nature of the issues involved.

**Remedy**

[20] The Claimant states that she wants the opportunity to be heard. It is clear that the Claimant has evidence and that she wishes to address some of her arguments.

[21] The Commission asks the Appeal Division to send the matter back to the General Division for reconsideration. That is the appropriate remedy in this case, as it will provide the Claimant with a fair opportunity to give evidence and make arguments on the merits of her appeal on the misconduct issue.

**Conclusion**

[22] The appeal is allowed. I am returning this matter to a different member of the General Division for reconsideration.

Janet Lew  
Member, Appeal Division