



Citation: *AZ v Canada Employment Insurance Commission*, 2022 SST 1273

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

# **Leave to Appeal Decision**

**Applicant:** A. Z.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated September 30, 2022  
(GE-22-1266)

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**Tribunal member:** Jude Samson

**Decision date:** November 30, 2022

**File number:** AD-22-795

## Decision

[1] A. Z. is the Claimant in this case. I'm refusing her request for leave (permission) to appeal. Her appeal will not proceed.

## Overview

[2] The Claimant's employer put her on an unpaid leave of absence because she refused to follow its COVID-19 vaccination policy. Since she was out of work, the Claimant applied for Employment Insurance (EI) regular benefits. However, the Canada Employment Insurance Commission (Commission) refused to pay her benefits saying that she had voluntarily taken a leave of absence without just cause.

[3] The Claimant appealed the Commission's decision to the Tribunal's General Division and lost. The Claimant now wants to appeal the General Division decision to the Tribunal's Appeal Division. However, she needs permission for her file to move forward.

[4] The Claimant's appeal has no reasonable chance of success. I have no choice, then, but to refuse permission to appeal.

## Issues

[5] I considered the following issues as part of my decision:

- a) Could the General Division have made an error by failing to ask the Commission why it changed its reason for refusing to pay benefits to the Claimant?
- b) Could the General Division have made an error by failing to consider whether the COVID-19 vaccination policy was valid?

[6] The Claimant might also have tried to raise a third issue about vaccines and misconduct. However, her allegations are so vague that I'm unable to connect it to one of the errors that I can consider. As a result, I'm not considering that issue any further.

## Analysis

[7] Most Appeal Division files follow a two-step process. This appeal is at step one: permission to appeal.

[8] The legal test the Claimant needs to meet at this step is low: Is there any arguable ground on which the appeal might succeed?<sup>1</sup> If the appeal has no reasonable chance of success, then I must refuse permission to appeal.<sup>2</sup>

[9] To decide this question, I focused on whether the General Division could have made one of the errors that the law says I can consider.<sup>3</sup>

### The Claimant's appeal has no reasonable chance of success

#### – The General Division was able to consider whether the Claimant had been suspended for misconduct

[10] In its decision letters, the Commission told the Claimant that it was refusing to pay her EI benefits because she had voluntarily taken leave from her job.<sup>4</sup> Similarly, the Claimant's employer referred to her as being on a leave of absence.<sup>5</sup> But the Claimant stressed that she had not left her job **voluntarily**.

[11] In its arguments to the General Division, the Commission said that the Claimant wasn't entitled to benefits regardless of whether she took a voluntary leave of absence or was suspended due to misconduct.<sup>6</sup> The legal consequence—disentitlement—is the same under both scenarios.

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<sup>1</sup> This legal test is described in cases like *Osaj v Canada (Attorney General)*, 2016 FC 115 at paragraph 12 and *Ingram v Canada (Attorney General)*, 2017 FC 259 at paragraph 16.

<sup>2</sup> This is the legal test described in section 58(2) of the *Department of Employment and Social Development Act* (DESD Act).

<sup>3</sup> Section 58(1) of the DESD Act lists the relevant errors, formally known as "grounds of appeal."

<sup>4</sup> The Commission's decision letters are on pages GD3-19 and GD3-23.

<sup>5</sup> For example, letters from the Claimant's employer start on pages GD8-9 and GD8-11. The Claimant's Record of Employment is on page GD3-16.

<sup>6</sup> See the Commission's representations to the General Division (document GD4), along with sections 31 and 32 of the *Employment Insurance Act*.

[12] As part of its process, the General Division asked the Commission to clarify its position.<sup>7</sup> In response, the Commission noted the connection between misconduct and taking a voluntary leave of absence, but asked for the appeal to proceed as a misconduct case.<sup>8</sup>

[13] The General Division was clearly entitled to proceed as it did. The Claimant was challenging her disenfranchisement to benefits. The General Division could consider the reasons for her disenfranchisement, however they were characterized.<sup>9</sup>

[14] The General Division didn't need to ask more questions about why the Commission changed its position, and whether it was motivated by politics. The Commission's arguments came in response to the Claimant's Application to the Appeal Division and to the member's questions.

[15] In fact, the General Division was showing appropriate concern for the fairness of its process. Since the Commission's position was somewhat unclear, the General Division took steps before, during, and after the hearing to make sure that the Claimant understood the Commission's case and was able to respond to it.<sup>10</sup> Indeed, the Claimant's allegations don't seem to question the fairness of the proceeding.

[16] In the circumstances, the Claimant's arguments have no reasonable chance of success. As long as it maintained a fair process, the General Division was clearly able to consider whether the Claimant had been suspended for misconduct.

– **The General Division didn't need to consider the validity of the COVID-19 vaccination policy**

[17] The Claimant argues that the General Division made an error by failing to decide whether her employer's COVID-19 vaccination policy is invalid. Specifically, is it

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<sup>7</sup> See document GD5.

<sup>8</sup> See document GD7.

<sup>9</sup> See, for example, decisions such as *Canada (Attorney General) v Côté*, 2006 FCA 219 at paragraph 9 and *Canada (Attorney General) v Desson*, 2004 FCA 303 at paragraph 4.

<sup>10</sup> See, for example, documents GD5 to GD8 and listen to the audio recording of the General Division hearing.

contrary to the *Canadian Charter of Rights and Freedoms*, Ontario's *Human Rights Code*, or *The Universal Declaration of Human Rights*?

[18] The General Division clearly didn't have to decide these issues because the Claimant never asked it to. I've reviewed the documents that the Claimant provided to the General Division and listened to the audio recording of the General Division hearing. Nowhere did I understand the Claimant to be raising these issues.

[19] As a result, this argument has no reasonable chance of success.

– **There are no other reasons for giving the Claimant permission to appeal**

[20] Aside from the Claimant's arguments, I also reviewed the file, listened to the audio recording of the General Division hearing, and examined the General Division decision.<sup>11</sup> The General Division summarized the law and used evidence to support its decision. I didn't find evidence that the General Division might have ignored or misinterpreted.

## **Conclusion**

[21] I've concluded that the Claimant's appeal has no reasonable chance of success. I have no choice, then, but to refuse permission to appeal. This means that the appeal will not proceed.

Jude Samson  
Member, Appeal Division

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<sup>11</sup> The Federal Court has said that I must do this in decisions like *Griffin v Canada (Attorney General)*, 2016 FC 874 and *Karadeolian v Canada (Attorney General)*, 2016 FC 615.