



Citation: *JS v Canada Employment Insurance Commission*, 2022 SST 1367

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

# **Leave to Appeal Decision**

**Applicant:** J. S.

**Respondent:** Canada Employment Insurance Commission

---

**Decision under appeal:** General Division decision dated September 16, 2022  
(GE-22-2109)

---

**Tribunal member:** Melanie Petrunia

**Decision date:** November 20, 2022

**File number:** AD-22-737

## **Decision**

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

## **Overview**

[2] The Applicant, J. S. (Claimant), was suspended and then dismissed from his job because he did not comply with the employer's COVID-19 vaccination policy. He applied for employment insurance (EI) regular benefits.

[3] The Respondent, the Canada Employment Insurance Commission (Commission), decided that the reason for the Claimant's dismissal was misconduct. It disqualified the Claimant from receiving benefits. The Claimant requested a reconsideration and the Commission maintained its decision.

[4] The Claimant appealed the reconsideration decision to the Tribunal's General Division. The General Division dismissed the appeal. It found that the Claimant lost his job because of misconduct and he is disqualified from receiving EI benefits.

[5] The Claimant is now asking to appeal the General Division decision to the Tribunal's Appeal Division. However, he needs permission for his appeal to move forward. The Claimant argues the General Division did not follow procedural fairness and made an error of law.

[6] I have to decide whether there is some reviewable error of the General Division on which the appeal might succeed. I am refusing leave to appeal because the Claimant's appeal has no reasonable chance of success.

## **Issue**

[7] The issues are:

- a) Is there an arguable case that the General Division did not follow procedural fairness?

- b) Is there an arguable case that the General Division made an error of law?
- c) Does the Claimant raise any other reviewable error of the General Division upon which the appeal might succeed?

## Analysis

[8] The legal test that the Claimant needs to meet on an application for leave to appeal is a low one: Is there any arguable ground on which the appeal might succeed?<sup>1</sup>

[9] To decide this question, I focused on whether the General Division could have made one or more of the relevant errors (or grounds of appeal) listed in the Department of Employment and Social Development Act (DESD Act).<sup>2</sup>

[10] An appeal is not a rehearing of the original claim. Instead, I must decide whether the General Division:

- a) failed to provide a fair process;
- b) failed to decide an issue that it should have, or decided an issue that it should not have;
- c) based its decision on an important factual error;<sup>3</sup> or
- d) made an error in law.<sup>4</sup>

[11] Before the Claimant can move on to the next stage of the appeal, I have to be satisfied that there is a reasonable chance of success based on one or more of these grounds of appeal. A reasonable chance of success means that the Claimant could

---

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

<sup>2</sup> DESD Act, s 58(2).

<sup>3</sup> The language of section 58(1)(c) actually says that the General Division will have erred if it bases its decision on a finding of fact that it makes in a perverse or capricious manner or without regard for the material before it. The Federal Court has defined perverse as “willfully going contrary to the evidence” and defined capricious as “marked or guided by caprice; given to changes of interest or attitude according to whim or fancies; not guided by steady judgment or intent” *Rahi v Canada (Minister of Citizenship and Immigration)* 2012 FC 319.

<sup>4</sup> This paraphrases the grounds of appeal.

argue his case and possibly win. I should also be aware of other possible grounds of appeal not precisely identified by the Claimant.<sup>5</sup>

## **Background**

[12] The Claimant's employer introduced a policy concerning vaccination against COVID-19 on September 30, 2021. The policy required employees to provide proof that they were fully vaccinated, or have a valid exemption, by November 30, 2021.<sup>6</sup>

Employees who did not comply with the policy would be placed on an unpaid leave of absence. Further non-compliance would result in dismissal.

[13] The Claimant did not provide proof of vaccination status by the required deadlines. The employer suspended and then dismissed the Claimant for failing to comply with the policy.

[14] The Commission decided that the reason for the Claimant's dismissal was misconduct. It decided that he was disqualified from receiving EI benefits. The Claimant appealed this decision to the Tribunal's General Division. He argued that he was fired, not placed on unpaid leave. He also argued that he followed the proper procedures for a religious exemption and requested accommodation, but both requests were unlawfully denied.

[15] The General Division dismissed the Claimant's appeal. It found that the Claimant was suspended and then dismissed from his job because he failed to comply with the employer's vaccination policy.<sup>7</sup> It also found that the Claimant was aware that failing to comply with the employer's policy could lead to his dismissal.<sup>8</sup>

[16] The General Division considered the Claimant's arguments that he had requested an exemption from the policy and asked for accommodations from the

---

<sup>5</sup> *Karadeolian v Canada (Attorney General)*, 2016 FC 615; *Joseph v Canada (Attorney General)*, 2017 FC 391.

<sup>6</sup> GD3-24 to GD3-26

<sup>7</sup> General Division decision at para 11.

<sup>8</sup> General Division decision at para 28.

employer. It found that the Claimant knew that these requests were denied by the employer.<sup>9</sup>

[17] The General Division also considered the Claimant's argument that the policy violated his right to privacy and was not part of his contract when he was hired. It found that that it was not within its jurisdiction to decide whether the employer's policy was fair or reasonable.<sup>10</sup>

### **There is no arguable case that the General Division failed to provide a fair process**

[18] The Claimant argues that the General Division failed to provide a fair process because it decided that he didn't follow a mandatory vaccine policy. He states that he did not get to see the "legislation passed document."

[19] I find that there is no arguable case that the General Division failed to provide a fair process. The General Division was required to decide why the Claimant was dismissed and whether the reason for dismissal was misconduct. The parties agreed at the hearing that he was dismissed because he didn't follow the employer's vaccination policy.<sup>11</sup> The General Division did not breach natural justice or procedural fairness when it made this finding.

### **There is no arguable case that the General Division made an error of law**

[20] The Claimant argues that the General Division made an error of law because the employer cannot unilaterally change policies without the employee's consent and there was no vaccine policy when he was hired. He says that medical procedures are voluntary and cannot be mandated. He also states that his request for accommodation and religious exemption were both unlawfully denied.

---

<sup>9</sup> General Division decision at para 31.

<sup>10</sup> General Division decision at para 37.

<sup>11</sup> General Division decision at para 11.

[21] I find that there is no arguable case that the General Division erred in law for any of the reasons stated by the Claimant. He made the same arguments before the General Division, and they were considered in its decision.

[22] The General Division noted the Claimant's argument that the vaccine policy was not in place when he was first hired.<sup>12</sup> The General Division found that the employer has a right to manage its daily operations, including the development and implementation of policies. When the employer introduced the vaccination policy, it became an express condition of the Claimant's employment.<sup>13</sup>

[23] The General Division also considered the Claimant's argument that his request for accommodation and for a religious exemption were unlawfully denied. It found that the Claimant knew his requests were denied and knew that continuing not to comply with the vaccination policy could lead to his dismissal.<sup>14</sup> The General Division also found that it is not within its jurisdiction to decide whether the employer should have approved his religious exemption or provided accommodation.<sup>15</sup>

[24] The General Division did not err in law when it made these determinations. It considered and applied the proper legal test when it determined that the Claimant was dismissed for failing to comply with the employer's vaccination policy, and that this was misconduct.

[25] The Claimant is raising the same arguments now before the Appeal Division that were considered by the General Division. The Claimant's reasons to do amount to any errors by the General Division.

[26] I find that there is no arguable case that the General Division made an error of law, or failed to provide a fair process.

---

<sup>12</sup> General Division decision at para 34.

<sup>13</sup> General Division decision at para 35.

<sup>14</sup> General Division decision at para 31.

<sup>15</sup> General Division decision at para 36.

[27] Aside from the Claimant's arguments, I have also considered other grounds of appeal. The Claimant has not pointed to any error of jurisdiction on the part of the General Division, and I have not identified any. There is no arguable case that the General Division based its decision on an important mistake about the facts of the case.

[28] The Claimant has not identified any errors of the General Division upon which the appeal might succeed. As a result, I am refusing leave to appeal.

## **Conclusion**

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

Melanie Petrunia  
Member, Appeal Division