Citation: *JR v Canada Employment Insurance Commission*, 2022 SST 1407

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	J. R.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated October 4, 2022 (GE-22-893)

Tribunal member:	Stephen Bergen
Decision date:	**November 30, 2022**
File number:	AD-22-775

Decision

[1] I am refusing leave (permission) to appeal. The appeal will not proceed.

Overview

[2] The Applicant, J. R., is the Claimant in this case. He is a truck driver and requires his driver's licence to perform his regular job duties. His employer suspended him on September 24, 2021 because his driver's licence had been suspended. J. R.'s employer shut down for the season in October but the Claimant's licence suspension was not lifted until December 17, 2021.

[3] On February 13, 2022, the Respondent, the Canada Employment Insurance Commission (Commission), found that the Claimant's employer had suspended him for his own misconduct. It decided that the Claimant was disentitled to benefits from September 20, 2021, until December 17, 2021.

[4] The Claimant asked the Commission to reconsider, but it would not change its decision.

[5] The Claimant appealed to the General Division. The General Division dismissed the appeal but modified the period of disentitlement so that it started on September 25, 2021 and not September 20, 2021.

[6] The Claimant is now asking for leave to appeal to the Appeal Division.

[7] I am refusing leave to appeal. The Claimant has not made out an arguable case that the General Division made an error of procedural fairness, an error of law, or an important error of fact.

Issue

[8] Was the General Division process unfair in some way?

[9] Did the General Division ignore or misunderstand relevant evidence?

Analysis

General Principles

[10] For the Claimant's application for leave to appeal to succeed, his reasons for appealing would have to fit within the "grounds of appeal." To grant this application for leave and permit the appeal process to move forward, I must find that there is a reasonable chance of success on one or more grounds of appeal.

[11] The grounds of appeal identify the kinds of errors that I can consider. I may consider only the following errors:

a) The General Division hearing process was not fair in some way.
b) 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 (error of jurisdiction).
c) The General Division based its decision on an important error of fact.
d) The General Division made an error of law when making its decision.[1]

[12] The Courts have equated a reasonable chance of success to an "arguable case."[2]

Error of fairness

[13] When the Claimant completed his Application to the Appeal Division, he selected only one ground of appeal. He asserted that the General Division did not follow procedural fairness.

[14] Natural justice refers to the fairness of the General Division process. It includes procedural protections such as the right to an unbiased decision-maker and the right of a party to be heard and to know the case against him or her.

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[1] This is a plain language version of the three grounds. The full text is in section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).
[2] See *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; and *Ingram v Canada (Attorney General)*, 2017 FC 259.

[15] The Claimant did not identify any unfair action or procedure that could have affected his right to be heard or to respond to the Commission's arguments. Likewise, the Claimant did not suggest that the General Division member acted in some way that made him think that she was biased or had prejudged the matter.

[16] Therefore, there is no arguable case that the General Division acted in a way that was procedurally unfair.

Error of law

[17] In his application, the Claimant stated that he understands that he should be entitled to EI benefits because the criteria is whether he was "ready, willing and able to work." Although he did not describe this as an "error of law", it is clear that he believes that the General Division misapplied the law.

[18] There is no arguable case that the General Division made an error of law. The Claimant is correct that he must be available for work to be entitled to benefits. Claimants may be disentitled to EI benefits for any working day in a benefit period, if they cannot prove that they are capable of, and available for, work on that day.[3]

[19] However, the EI Act may also disentitle claimants to EI benefits for other reasons. In this case, the Claimant was disentitled because his employer suspended him for misconduct. The EI Act says that such claimants are disentitled until the suspension ends, they lose or voluntarily leave the employment, or they qualify for benefits from other employment.[4]

[20] The facts before the General Division suggested that the Claimant's employer suspended him because he lost his licence, and that he lost his licence because he moved his vehicle when he had been drinking. The General Division cited and applied the section of the EI Act that was appropriate to the circumstances and to the decision it was required to make.

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[3] See section 18 of the *Employment Insurance Act* (EI Act).
[4] See section 31 of EI Act.

[21] I wrote the Claimant on November 14, 2022. In my letter, I described the types of errors I can consider and I asked him to explain again why he believed the General Division had made an error. The Claimant responded but did not frame his response in terms of the errors that I have the power to review.

[22] However, I note that he had originally said that he did not "intentionally or knowingly" think that relocating his truck would be a problem and he said something similar in his response to my letter. He said that he disagreed "with the General Division's decision that [he] knowingly and carelessly caused the problem." He restated the circumstances that gave rise to his licence suspension, and said that he made a mistake "simply and unwittingly".

[23] The General Division did not use the words, "knowingly and carelessly". However, it did find that the Claimant's actions were "so reckless as to approach wilfulness." It also found that he "knew, or ought to have known, that his driver's licence could be suspended."[5] In both cases, the General Division was evaluating the Claimant's conduct according to standards that have been approved in decisions of the Federal Court of Appeal.[6]

[24] The decisions cited by the General Division are still good law and relevant to the Claimant's circumstances.

[25] There is no arguable case that the General Division made an error of law.

Important error of fact

[26] The Claimant has not pointed to any evidence that the General Division overlooked or that it misunderstood. However, the Claimant is unrepresented and he may have had difficulty framing his argument.

[27] Because of this, I have searched the appeal record for an arguable case that the General Division may have overlooked or misunderstood some other relevant

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[5] See General Division decision at AD1-3 at paras 29 and 30.
[6] See General Division decision at AD1-3 at paras 11 and 12.

evidence.[7] I also considered whether any of its findings of fact were unsupported by the evidence.[8]

[28] I have not found any instance in which the General Division may have ignored or overlooked relevant evidence by which it may arguably have made an important error of fact. Furthermore, the General Division's findings appear to follow from the evidence that was before it.

[29] Much of what the Claimant says in his reasons for appealing the General Division decision is a restatement of the arguments he made to the General Division. Basically, the Claimant disagrees with the General Division's conclusion that it was reckless of him to drive his car off the street and into his drive, when he had been drinking. He is asking me to review the same evidence, but to come to a different conclusion.

[30] I can't do that. I do not have the ability to interfere with the General Division's findings just because I might look at the evidence differently than the General Division. It is the job of the General Division to weigh the evidence and to make findings of fact.[9] I can only intervene where I find that the General Division based its decision on a finding that overlooked or misunderstood relevant evidence.[10]

[31] I have not found anything in the record that would support an arguable case that the General Division made an important error of fact.

Error of mixed fact and law

[32] The Claimant's arguments also suggest that he believes the General Division should not have found that his actions amounted to misconduct. He does not dispute the events that led to his licence suspension. At the same time, he does not think he did anything that should have caused him to lose his benefit entitlement.

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[7] The Federal Court directed the Appeal Division to look beyond the stated grounds of appeal in circumstances like these. See the decision in *Karadeolian v Canada (Attorney General)*, 2016 FC 615.
[8] I am paraphrasing. Section 58(1)(c) of the DESD Act uses the words "perverse or capricious."
[9] See the decision in *Simpson v Canada (Attorney General)*, 2012 FCA 82.
[10] This is a plain language version of section 58(1)(c) of the DESD Act.

[33] The EI Act is clear that a worker who is suspended for misconduct is disentitled for the period of the suspension. The Federal Court of Appeal has made a number of decisions to help define what the EI Act means by misconduct. The General Division applied the principles from those cases to find that the Claimant's actions amounted to misconduct. It then applied section 31 of the EI Act to find that the Claimant was disentitled.

[34] If the Claimant is disagreeing with how the General Division did this, then he is raising what the law terms an "error of mixed fact and law". An error of mixed fact and law is an error in applying settled law to the facts. The Appeal Division does not have the jurisdiction to consider errors of mixed fact and law.[11]

[35] The Claimant has no reasonable chance of success on appeal.

Conclusion

[36] I am refusing permission to appeal. This means that the appeal will not proceed.

Stephen Bergen
Member, Appeal Division

[11] See the decision in *Quadir v Canada (Attorney General),* 2018 FCA 21.