Citation: *GH v Canada Employment Insurance Commission*, 2023 SST 12

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	G. H.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated September 23, 2022 (GE-22-1552)

Tribunal member:	Charlotte McQuade
Decision date:	January 5, 2023
File number:	AD-22-776

Decision

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

Overview

[2] G. H. is the Claimant. She worked in a long-term care home. The employer implemented a Covid-19 mandatory vaccination policy. The Claimant did not comply with the policy. As a result, the Claimant was first placed on an unpaid leave of absence and then dismissed.

[3] After dismissal, the Claimant applied for Employment Insurance (EI) regular benefits. The Canada Employment Insurance Commission (Commission) disqualified the Claimant from benefits for reason that she lost her job due to her own misconduct.

[4] The Claimant appealed the Commission's decision to the Tribunal's General Division. The General Division dismissed the Claimant's appeal. The General Division decided the Claimant lost her job due to misconduct. The Claimant is now asking to appeal the General Division's decision to the Appeal Division. However, she needs permission for her appeal to move forward.

[5] The Claimant submits the General Division made errors of fact and law and breached procedural fairness.

[6] I am satisfied that the Claimant's appeal has no reasonable chance of success, so I am refusing permission to appeal.

Issue

[7] Is it arguable that the General Division made a reviewable error when it concluded the Claimant lost her job due to misconduct?

Analysis

[8] The Appeal Division has a two-step process. First, the Claimant needs permission to appeal. If permission is denied, the appeal stops there. If permission is given, the appeal moves on to step two. The second step is where the merits of the appeal are decided.

[9] I must refuse permission to appeal if I am satisfied that the appeal has no reasonable chance of success.[1] The law says that I can only consider certain types of errors. These are:[2]

- The General Division breached procedural fairness.
- The General Division made an error of jurisdiction (meaning that it did not decide an issue that it should have decided, or it decided something it did not have the power to decide).
- The General Division based its decision on an important error of fact.
- The General Division made an error of law

[10] A reasonable chance of success means there is an arguable case that the General Division may have made at least one of those errors.[3]

The General Division decision

[11] The General Division had to decide whether the Claimant lost her job due to misconduct.

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[1] Section 58(2) of the *Department of Employment and Social Development Act* (DESD Act) says this is the test I must apply.
[2] Section 58(1) of the DESD Act describes these errors.
[3] See *Osaj v Canada (Attorney General)*, 2016 FC 115, which describes what a "reasonable chance of success" means.

[12] The EI Act provides for disqualification from benefits where a claimant has lost their job because of their misconduct.[4]

[13] Misconduct is not defined in the *Employment Insurance Act* (EI Act). However, the Federal Court of Appeal has come to a settled definition about what this term means.

[14] Misconduct requires conduct that is wilful. This means that the conduct was conscious, deliberate, or intentional.[5]

[15] Misconduct also includes conduct that is so reckless that it is almost wilful.[6]

[16] The Federal Court of Appeal has explained that another way to put this is that there is misconduct if a claimant knew or should have known their conduct could get in the way of carrying out their duties toward their employer and there was a real possibility of being let go because of that.[7]

[17] The Claimant's employer implemented a Covid-19 mandatory vaccination policy. According to the Claimant's testimony, the policy required that she obtain the first dose of a Covid-19 vaccine dose by October 12, 2021, and the second dose by November 15, 2021.[8]

[18] The policy allowed for medical exemptions only. The General Division found that the Claimant had not applied for a medical exemption. She had requested a religious exemption but that was refused.

[19] The Claimant did not comply with the employer's policy. As a result, her employer first put her on an unpaid leave of absence on October 12, 2021, and then terminated her on December 12, 2021.

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[4] See section 30(1) of the *Employment Insurance Act (*EI Act).
[5] See *Mishibinijima v Canada (Attorney General),* 2007 FCA 36.
[6] See *McKay-Eden v Her Majesty the Queen*, A-402-96.
[7] See *Mishibinijima v Canada (Attorney General)*, 2007 FCA.
[8] See paragraph 23 of the General Division decision.

[20] There was no dispute before the General Division that the reason for termination was that the Claimant had not complied with the employer's vaccination policy.

[21] The General Division decided that the employer could choose to develop and impose policies at the workplace and when the employer imposed a vaccination policy, that became a condition of the Claimant's employment.

[22] The General Division found as a fact that the employer's policy and various revisions were communicated to the Claimant and that she was aware and had enough time to comply with the policy.

[23] The General Division decided that the Claimant willfully, deliberately and consciously chose to not comply with the policy for her own personal reasons. She disagreed with the policy, so she did not want to comply with it.[9]

[24] The General Division decided that the Claimant knew or ought to have known that the consequences of not complying would lead to an unpaid leave of absence and dismissal as the consequences were communicated to the Claimant in the policy. The General Division noted that even though the language in the policy says it "may" result in termination, that meant termination was a possibility. The General Division also noted that the Claimant received several letters from the employer reminding the Claimant to comply by the vaccination or it "will" result in an unpaid leave of absence and termination.[10]

[25] The General Division concluded, therefore, that the Commission had proven that the Claimant was suspended and had lost her job due to misconduct.

It is not arguable that the General Division misinterpreted what misconduct means

[26] The Claimant argues that the General Division misinterpreted what "misconduct" means.

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[9] See paragraphs 40 and 41 of the General Division decision.
[10] See paragraph 44 of the General Division decision.

[27] The Claimant maintains that her actions were not wilful because:

- She was not negligent or careless.
- She complied with the employer's initial policy requirements.
- She had perfect job performance.
- She could do her job safely.
- She did not know she would be terminated as the employer made this threat yearly with the flu vaccination but no one was terminated.
- Refusing a vaccination is not misconduct.

[28] The Claimant also maintains that her situation is the same as that the claimant's situation in *ZZ v Canada Employment Insurance Commission* where the claimant was not disqualified from benefits.[11]

[29] It is not arguable that the General Division misinterpreted what misconduct means. The General Division applied the correct legal test, and its findings of fact were supported by the evidence. The evidence was the Claimant deliberately refused to comply with the policy, knowing she was putting her employment at risk.

[30] Even though the employer may not have acted on its prior threats concerning the flu vaccine, the evidence was clear that the Claimant was made aware of the potential consequences in failing to comply with the Covid-19 policy by the deadline would result in termination.[12]

[31] Deliberately engaging in conduct in which a claimant knows or ought to know puts their employment at risk is considered to be misconduct, as the Federal Court of Appeal has defined misconduct.[13]

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[11] See *ZZ v Canada Employment Insurance Commission,* 2022 SST 597.
[12] See GD3-38 and GD3-39.
[13] See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36.

[32] There is no doubt the Claimant was a long-standing employee and had no wrongful intent in refusing vaccination. After all, she had worked for her employer for 18 years. However, the law says that it is not necessary that a claimant have wrongful intent for their conduct to be considered misconduct under the EI Act.[14]

[33] It may be that the Claimant believed she could perform her job duties safely without vaccination. However, duties owed to an employer are broader than just the job tasks themselves and include following safety policies.[15]

[34] The Federal Court of Appeal has said that breaching an express or implied duty owed to an employer can result in a finding of misconduct.[16]In this case the General Division decided the employer imposed a vaccination policy because of the Covid-19 pandemic so being vaccinated became a condition of the Claimant's employment. The General Division decided that the Claimant breached the policy when she chose not to comply with it and that interfered with her ability to carry out her duties in the long-term care home.[17]

[35] The Federal Court of Appeal has also said that a deliberate violation of an employer's policy can be considered to be misconduct.[18] That is what happened here. The Claimant deliberately breached her employer's policy, knowing she was putting her employment at risk by doing so.

[36] The Claimant did not ask the General Division to consider the case of ZZ v *Canada Employment Insurance Commission*.[19] So, the General Division did not make an error of law by not considering this case.

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[14] See *Attorney General of Canada v Secours*, A-352-94.
[15] See, for example, CUB 80774 and CUB 71744.
[16] See *Canada (Attorney General) v Brissette* 1993 CanLII 3020 (FCA); See also *Canada (AG) v Lemire*, 2010 FCA.
[17] See paragraph 47 of the General Division decision.
[18] See *Attorney General of Canada v Secours*, A-352-94; See also *Canada (Attorney General) v Bellavance*, 2005 FCA 87; See also *Canada (Attorney General) v Gagnon*, 2002 FCA 460. See also *Nelson v Canada (Attorney General)*, 2019 FCA 222 (CanLII).
[19] See *ZZ v Canada Employment Insurance Commission,* 2022 SST 597.

[37] However, I would note that the same legal test for misconduct was applied in that case as in the Claimant's case. The different outcome had to do with different facts.

[38] Unlike the Claimant, the claimant in the *ZZ* case had been approved for a religious exemption by her employer. As a form of accommodation, her employer had placed her on an unpaid leave. The General Division decided in that case that the claimant's conduct in being placed on an unpaid leave was not wilful as it could not have been anticipated that her employer would accommodate her by placing her on an unpaid leave. The policy in question had only addressed non-compliance consequences for those employees who remain unvaccinated without exemption.

It is not arguable that the General Division was required to consider section 29(c) or section 49(2) of the EI Act

[39] The Claimant submits that the General Division made an error of law by not considering section 29(c) of the EI Act and section 49(2) of the EI Act.

[40] The Claimant argues that section 29(c) of the EI Act applies to her situation as it provides that there is just cause for voluntarily leaving if a claimant had no reasonable alternative to leaving, having regard to discrimination under the *Canadian Human Rights Act* and practices of the employer contrary to law.

[41] The Claimant submits further that the General Division should have applied section 49(2) of the EI Act. This section provides that the Commission shall give the benefit to the doubt to a claimant on the issue of whether any circumstances exist that have the effect of disqualifying a claimant for reason of misconduct, if the evidence is evenly balanced.

[42] The Claimant says the General Division should have given her the benefit of the doubt. She maintains the Commission did not obtain any of the information it relied on from the employer. Instead, she provided information to the Commission. The Claimant says she complied with the initial version of the policy on file. She says the General Division failed to contact the employer to prove the policy was accurate. She says her

testimony and other documentation about later policies were used by the General Division against her.

[43] It is not arguable that the General Division made an error of law by failing to apply section 29(c) of the EI Act or section 49(2) of the EI Act.

[44] I have reviewed the documentation on file and listened to the audio recording from the General Division hearing. The Claimant did not make any arguments about section 29(c) of the EI Act or section 49(2) of the EI Act to the General Division.

[45] Even so, there was no evidence before the General Division to suggest the Claimant had voluntarily left her employment. The evidence was that she had been terminated. The Claimant told the Commission she had been terminated.[20] There was a termination letter on file.[21] The issue under appeal was whether the Claimant lost her employment due to misconduct.[22] So, section 29(c) of the EI Act was not relevant to the question the General Division had to decide.

[46] Section 49(2) of the EI Act was not relevant either.

[47] The Tribunal does not have any investigatory powers. If, in considering a claim for benefits, the Commission finds an indication from the documents relating to a claim that the loss of employment resulted from a claimant's misconduct, the law says that the Commission shall give the claimant and the employer an opportunity to provide information as to the reasons for the loss of employment and, if the information is provided, take it into account in determining the claim.[23]

[48] This is what happened. The Claimant was asked by the Commission to provide all the documentation she received from her employer regarding the change to their vaccine policy and all documentation she had provided to the employer regarding any

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[20] GD3-7.
[21] GD3-31.
[22] See GD 2-25 for Commission's initial decision letter of February 24, 2022, disqualifying the Claimant from benefits for reason she lost her job due to misconduct. See GD3-41 for Commission's reconsideration decision of April 11, 2022, confirming the initial decision.
[23] See section 51 of the EI Act.

exemption she may have requested. She was told that this information would be used to adjudicate her claim.[24] The Claimant provided information concerning her termination to the Commission. The Commission included that information as part of the evidence it relied on before the Tribunal.[25]

[49] The General Division could not disregard evidence before it simply because the Commission had obtained that information from the Claimant, rather than the employer. The General Division was required to consider all of the evidence before it, including the Claimant's testimony, when deciding whether the Commission met its burden to prove that the Claimant lost her job due to her misconduct.

[50] The General Division was satisfied, on the evidence before it, that the Commission had met that burden. There was sufficient evidence before the General Division for it to conclude that it was more likely than not the employer had a vaccination policy in place that the Claimant had not complied with, and that the Claimant was aware that she could be terminated for non-compliance.

[51] Section 49(2) of the EI Act only applies where General Division makes a finding of fact that the evidence was equally balanced. The General Division did not make a finding of fact that the evidence was equally balanced, so this section did not apply. Indeed, the reason the Claimant was terminated was not in dispute.

It is not arguable that the General Division based its decision on an error of fact

[52] The Claimant argues that the General Division made an error of fact in finding that the employer's Covid-19 policy was a condition of her employment.

[53] She maintains that the employer's vaccination policy was not a term of her collective agreement, and the vaccination policy was imposed on employees without the

[24] GD3-24.
[25] The Commission's documentation is found in GD3.

required consultation with her union. She argues, since the policy was not a condition of her employment, her actions in not following it were not misconduct.

[54] The Claimant submits that the General Division overlooked evidence that she had filed a grievance regarding her unjust termination, and also overlooked a labour arbitration case that related to the same employer and the same policy, which showed her employer had violated the collective agreement.[26]

[55] The Appeal Division can intervene only in certain kinds of errors of fact. The Appeal Division can intervene where the General Division based its decision on an erroneous finding of fact that it made perversely, capriciously, or without regard for the material before it.[27]

[56] A perverse or capricious finding of fact is one where the finding squarely contradicts or is unsupported by the evidence.[28]

[57] Factual findings being made without regard to the evidence would include circumstances where there was no evidence to rationally support a finding or where the decision maker failed to reasonably account at all for critical evidence that ran counter to its findings.[29]

[58] It is not arguable that the General Division made an error of fact. The General Division generally accepted that the employer could choose to develop and impose policies at the workplace. The General Division decided that, in this case, the employer imposed a vaccination policy because of the covid19 pandemic. So, being vaccinated for Covid-19 became a condition of the Claimant's employment.[30]

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[26] The case the Claimant provided was *Chartwell Housing Reit* (*The Westmount, the Wynfield, the Woodhaven and the Waterford*) v *Healthcare, Office and Professional Employees Union, Local 2220*, 2022 CanLII 6832 (ON LA).
[27] See section 58(1)(c) of the DESD Act.
[28] See *Garvey v Canada (Attorney General),* 2018 FCA 118; See also *Walls v Canada (Attorney General)*, 2022 FCA 47 (CanLII).
[29] See *Walls v Canada (Attorney General),* 2022 FCA 47 (CanLII).
[30] See paragraph 47 of the General Division decision.

[59] The General Division noted that, in addition to the employer's policy, the employer identified in one of their letters that there was a Minister's "Directive" that required all staff working in long-term care to obtain a first dose by November 15, 2021, and the second dose by December 13, 2021, unless the staff member provided proof of a medical contraindication.

[60] The General Division's finding of fact that being vaccinated was a condition of the Claimant's employment was consistent with the evidence on file. The employer's mandatory vaccination policy was implemented in response to a Minister's Directive, requiring vaccination by all staff working in long-term care homes. Absent vaccination, the Claimant was unable to attend at work.[31]

[61] The Claimant provided no evidence to support her argument that she was not required to comply with the vaccination requirement in the policy as the employer had not consulted with her union before implementing the policy. She did not provide the collective agreement in evidence. She did not explain how the collective agreement, which is a contract, could somehow override the Minister's Directive.

[62] The General Division did not overlook the fact the Claimant had filed a grievance. The General Division acknowledged that the Claimant's union had filed a policy grievance and she had filed a personal grievance, but no arbitration date had been sent.

[63] While the Claimant and her union may have been disputing the employer's vaccination policy and her termination, there was no evidence before the General Division that a decision had been made in labour arbitration that the policy or any part of it was invalid.

[64] The General Division also did not overlook the labour arbitration case the Claimant provided. The General Division acknowledged the case involved a policy grievance, with the same employer. However, the General Division pointed out the case related to a different long-term care home than the employer worked at.[32]

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[31] GD3-36.
[32] See paragraph 7 of the General Division decision.

[65] There was no evidence before the General Division that the Claimant's collective agreement was the same as the collective agreement at issue in that case. So, it is not arguable that the General Division was required to adopt the findings in that case.

[66] In any event, the case does not assist the Claimant. The case concerned the implementation of mandatory vaccination policy in several long-term care homes pursuant to a Directive from the Minister of Long-Term Care that required Long-Term Care homes to have a mandatory Covid-19 vaccination policy for staff. The Minister's Directive left the consequences of non-compliance to the employer.

[67] This case turned on the very specific terms of the collective agreement and the policy in question. The Arbitrator found the employer had not consulted with the union, as required by a specific term in the collective agreement, before implementing its final vaccination policy. The Arbitrator also found that the fact the policy provided for the possibility of automatic termination upon failure to comply with the vaccination requirement was unreasonable.

[68] However, there was no finding by the Arbitrator that the vaccination policy was unlawful or that the employees in question did not have to comply with the vaccination requirements. Rather, the decision focused on the consequence imposed by the employer on the employees for failure to comply with the vaccination requirement.

[69] The General Division decided it did not have jurisdiction to decide whether the dismissal or penalty imposed on the Claimant was justified.[33] This finding was consistent with the direction from the Federal Court of Appeal that questions about the severity of the penalty imposed or whether a claimant has been wrongfully dismissed by their employer are not relevant to the question of misconduct under the EI Act.[34]

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[33] See paragraph 9 of the General Division.
[34] See *Canada (Attorney General) v Caul*, 2006 FCA 251; See also *Canada (Attorney General) v Marion*, 2002 FCA 185 (CanLII) and *Canada (Attorney General of Canada) v McNamara*, 2007 FCA 107 (Can LII).

[70] Aside from the Claimant's arguments, I have reviewed the documentary file, and listened to the audio recording from the General Division hearing. I did not find any key evidence that the General Division might have ignored or misinterpreted.

[71] The Claimant has not 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.

The General Division addressed all necessary arguments

[72] The Claimant maintains the General Division made an error of law by not considering her arguments about the legality of the policy. She says non-compliance with an unlawful policy is not misconduct.

[73] The Claimant said in her Notice of Appeal to the General Division that the employer's policy amounted to extortion pursuant to section 346 of the *Criminal Code of Canada* because the employer changed her employer agreement to include vaccination.[35]

[74] Now, in her application to the Appeal Division, the Claimant raises many other laws she says the policy violated. She raises, for example, the policy violated the *Canadian Bill of Rights*, the *Municipal Freedom of Information and Protection of Privacy Act*, various sections of the *Charter*, Bill S201, and section 50 of the *Occupational Health and Safety Act*.[36]

[75] The Claimant submits that it was not an answer for the General Division to say her recourse was to pursue an action in Court or any other Tribunal that may deal with her particular arguments. She says any other court action should not matter to the General Division.

[76] In support of her argument, the Claimant refers to the Federal Court of Appeal case of *Bedell* says that where an employee's direction or policy is lawful, an employee

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[35] GD2-6.
[36] AD1-9 to AD1-15.

must comply with it.[37] She argues this means if an employer's policy is unlawful, then the employee should not have to comply with it and not complying with it is not misconduct.

[77] The General Division did not decide whether the policy violated any laws. There was no mention in the decision about any arguments the Claimant made about the legality of the policy.

[78] However, there is no arguable case that the General Division made an error of jurisdiction or law by not deciding whether the employer's policy violated the *Criminal Code of Canada*.

[79] I have listened to the audio recording from the General Division hearing. I did not hear the Claimant provide any testimony or explanation about how the policy violated the *Criminal Code of Canada*.

[80] Further, there was no evidence before the General Division to suggest the policy was unlawful. Rather, the evidence was the employer's policy was lawfully implemented pursuant to the Minister's Directive on Mandatory Covid-19 Vaccination for Long-Term Care Homes, which required all staff of long-term care homes to have a first vaccination by November 15, 2021, and a second one by December 13, 2021, unless proof was provided of a medical contraindication.[38]

[81] The General Division is not required to address every argument that is canvassed before it.[39] However, the General Division's reasons must be sufficiently clear to explain why a decision was made and provide a logical basis for that decision. The reasons must also be responsive to the parties' key arguments.[40]

[82] The Claimant's argument about the *Criminal Code of Canada* was a mere allegation. The Claimant provided no explanation of that allegation, with reference to

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[37] See *Canada (A.G.) v Bedell*, A-1716-83 (FCA).
[38] See paragraph 24 of the General Division decision.
[39] See Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board), 2011 SCC 62 (CanLII).
[40] See *Canada (Attorney General) v Hoffman*, 2015 FC 1348 (CanLII).

evidence. So, it is not arguable that the General Division was required to address this allegation.

[83] The Claimant did not argue before the General Division that the policy breached any other laws. No explanation was provided in her Notice of Appeal or in her testimony about how the employer's policy violated any other laws.

[84] The General Division did not make an error of law or jurisdiction by not considering arguments that were not made to it.

[85] The General Division's reasons clearly explained why the General Division made the decision it did. The reasons provided a logical basis for the conclusion. The reasons responded to the Claimant's key arguments.

[86] The Appeal Division cannot consider the Claimant's new argument that the employer's policy violated various other laws, and that means her conduct in not following the policy is not misconduct.

[87] The Appeal Division is not conducting a rehearing of the case but rather looking for reviewable errors the General Division might have made on the record before it.[41] Aside from limited circumstances, the Appeal Division cannot accept new evidence.[42] The argument the Claimant is raising is not a pure question of law. Since she did not raise this specific argument about these other laws before the General Division, there is no evidentiary basis upon which to consider the argument.

[88] *Charter* arguments, in particular, require a sufficient evidentiary record. The Appeal Division has found previously that it cannot hear *Charter* arguments that were

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[41] See *Parchment v Canada (Attorney General*), 2017 FC 354.
[42] See *Sharma v Canada (Attorney General),* 2018 FCA 48 which explains that on judicial review, the Federal Court will only accept new evidence if it provides general background information, highlights findings that the Tribunal made without supporting evidence, or reveals ways in which the Tribunal acted unfairly. In *Sibbald v Canada (Attorney General),* 2022 FCA 157 at paragraph 39, the Federal Court of Appeal accepts that the Appeal Division should be guided by the same exceptions.

not already raised at the General Division first.[43] I see no reason to depart from that reasoning.

It is not arguable that the General Division breached procedural fairness

[89] The Claimant argues that the Tribunal as a whole is biased. She submits that the Tribunal has 73 cases on their website concerning misconduct and Covid-19 from December 31, 2020, to November 15, 2022. She says that in 3 of those cases the appeal was allowed and only 1 of them resulted in the claimant receiving benefits.

[90] The Claimant argues that these statistics bring up the question of reasonable apprehension of bias of the Tribunal. She submits that anything Covid-19 related is being decided without real consideration of the law which she maintains conflicts with sections 4.6 and 7.2 of the Tribunal's Code of Conduct which requires decision makers to make decisions free from improper influence.

[91] The Claimant points out that an example of this is the statement by Minister Carla Qualtrough saying, "Those fired for refusing vaccination should not receive EI benefits."

[92] Bias suggests a state of mind that is in some way predisposed to a particular result.

[93] Tribunals and individual adjudicators are presumed to be impartial.

[94] An allegation of bias is a serious allegation. The threshold for a finding of bias is high, and the burden of proof lies with the party alleging that it exists. The law says such an allegation cannot rest on mere suspicion, pure conjecture, insinuations, or mere impressions.[44]

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[43] See, for example, CF v *Minister of Employment and Social Development*, 2016 CanLII 33338 (SST) and *CM v Minister of Employment and Social Development, 2022 SST 382.*
[44] See *Arthur v Canada (A.G.),* 2001 FCA 223.

[95] The legal test for establishing bias is whether an informed person, viewing the matter realistically and practically and having thought the matter through, would conclude that it was more likely than not that the General Division member, whether consciously or unconsciously, would not decide the case in a fair manner.[45]

[96] It is not arguable that an informed person, viewing the matter realistically and practically and having thought the matter through, would conclude that it was more likely than not that the General Division member, whether consciously or unconsciously, would not decide the case in a fair manner.

[97] The statistics cited by the Claimant do not raise an arguable reasonable apprehension of bias. The legal test for misconduct has been defined by the Federal Court of Appeal and is binding on the Tribunal. One would expect cases where the same law is being applied to similar facts that they would be decided in a consistent manner.

[98] There is no evidence that the General Division was subject to any political influence or otherwise. The General Division is an independent decision-making body and not bound in any way to consider the comments made by the Minister in its decision-making. Nor was there any evidence the General Division member was even aware of the Minister's comments.

[99] Rather, the evidence shows that the Tribunal member was fully engaged in the hearing process. I have listened to the audio recording of the General Division hearing. The recording reveals the member gave the Claimant full opportunity to present her case. The General Division member carefully listened to Claimant's evidence and asked clarifying questions when necessary.

[100] The decision itself shows that the General Division member considered and addressed the Claimant's testimony and the documentary evidence on file. The General Division member's reasons explained her conclusion.

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[45] See *Committee for Justice and Liberty v National Energy Board*, 1976 CanLII 2 (SCC).

[101] There is no evidence whatsoever that the member had prejudged the case or did not approach the decision-making in a fair manner

[102] The Claimant has not raised an arguable case that the General Division made any reviewable errors.

[103] Having regard to the record, the decision of the General Division and considering the arguments made by the Claimant in her Application to the Appeal Division, I find that the appeal has no reasonable chance of success. So, I am refusing leave to appeal.

Conclusion

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

Charlotte McQuade
Member, Appeal Division