



Citation: *KR v Canada Employment Insurance Commission*, 2022 SST 1555

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

# **Leave to Appeal Decision**

**Applicant:** K. R.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated November 3, 2022  
(GE-22-2071)

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**Tribunal member:** Janet Lew

**Decision date:** December 30, 2022

**File number:** AD-22-852

## Decision

[1] Leave (permission) to appeal is refused. The appeal will not be going ahead.

## Overview

[2] The Applicant, K. R. (Claimant), is appealing the General Division decision. The General Division found that the Claimant had been suspended from her employment because of misconduct. She did something that caused her to be suspended. She had not complied with the employer's mandatory COVID-19 vaccination policy. As a result, the Claimant was disentitled from receiving Employment Insurance benefits.

[3] The Claimant that the General Division made factual errors. In particular, the Claimant denies that she voluntarily took a leave of absence from her job. She says that her employer forced her to take an involuntary leave of absence without pay.

[4] Before the Claimant can move ahead with her appeal, I must decide whether the appeal has a reasonable chance of success.<sup>1</sup> Having a reasonable chance of success is the same thing as having an arguable case.<sup>2</sup> If the appeal does not have a reasonable chance of success, this ends the matter.

[5] I am not satisfied that the appeal has a reasonable chance of success. Therefore, I am not giving permission to the Claimant to move ahead with her appeal.

## Issue

[6] Is there an arguable case that the General Division made a factual error about whether the Claimant voluntarily took a leave of absence from her employment?

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<sup>1</sup> Under section 58(2) of the *Department of Employment and Social Development Act* (DESD Act), I am required to refuse permission if am satisfied, "that the appeal has no reasonable chance of success".

<sup>2</sup> See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

## Analysis

[7] The Appeal Division must grant permission to appeal unless the appeal has no reasonable chance of success. A reasonable chance of success exists if there is a possible jurisdictional, procedural, legal, or certain type of factual error.<sup>3</sup>

[8] For factual errors, the General Division had to have based its decision on an error that was made in a perverse or capricious manner, or without regard for the evidence before it.

[9] Once an applicant gets permission from the Appeal Division, they move to the actual appeal. There, the Appeal Division decides whether the General Division made an error. If it decides that the General Division made an error, then it decides how to fix that error.

### **Is there an arguable case that the General Division made a factual error about whether the Claimant took a voluntary leave of absence from her employment?**

[10] The Claimant argues that the General Division made a factual error about whether she had taken a voluntary leave of absence from her employment. She denies that she went on a voluntary leave of absence. She says that her employer forced her to go on an unpaid leave of absence.

[11] The Claimant relies on the following to prove that she did not take a voluntary leave of absence from her employment:

- (a) An email she sent to her employer dated November 30, 2021. She stated that she was not voluntarily taking a leave and was ready, willing, and available to work.<sup>4</sup>

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<sup>3</sup> See section 58(1) of the DESD Act.

<sup>4</sup> See Claimant's email dated November 30, 2021, at GD3-22.

- (b) A X Employees' Union newsletter dated December 2021 stated that unvaccinated employees would be fined for entering their workplaces after November 30, 2021,<sup>5</sup> and
- (c) Sections 10(1)(a) and (2) of the *Public Services (COVID-19) Vaccination Regulation* stated that unvaccinated employees would be committing an offence for entering their workplaces and would be subject to a fine for each offence.<sup>6</sup>

[12] The General Division examined whether the Claimant voluntarily took a leave of absence or had been suspended from her employment. The General Division concluded that the Claimant did not voluntarily take a leave of absence from her job. Instead, the General Division found that the Claimant's employer suspended her.<sup>7</sup>

[13] The Claimant also suggests that the General Division made a legal error in concluding that the involuntary leave without pay constituted misconduct. However, she does not explain why or how this represents a legal error.

[14] I am not satisfied that there is an arguable case that the General Division made a factual error that the Claimant had voluntarily taken a leave of absence from her employment.

## Conclusion

[15] Permission to appeal is refused. This means that the appeal will not be going ahead.

Janet Lew  
Member, Appeal Division

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<sup>5</sup> The Claimant states that she submitted the document to the Social Security Tribunal the day before the General Division hearing. She also discussed the document at the hearing.

<sup>6</sup> See *Public Services (COVID-19) Vaccination Regulation*, at GD 9-17 to GD 9-38.

<sup>7</sup> See General Division decision at para 15.