



Citation: *DM v Canada Employment Insurance Commission*, 2022 SST 1534

**Social Security Tribunal of Canada
Appeal Division**

Leave to Appeal Decision

Applicant: D. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated October 27, 2022
(GE-22-2178)

Tribunal member: Melanie Petrunia

Decision date: December 29, 2022

File number: AD-22-857

Decision

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

Overview

[2] The Applicant, D. M. (Claimant), was placed on a leave of absence (suspended) by his employer. The reason for the suspension was that he did not disclose his vaccination status as required by his 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 suspension was misconduct. It disentitled 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 was suspended because of misconduct and he is disentitled 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 didn't follow procedural fairness, based its decision on important errors of fact, and made errors of law and jurisdiction.

[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] Does the Claimant raise any 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?¹

[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).²

[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;³ or

d) made an error in law.⁴

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

¹ 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.

² DESD Act, s 58(2).

³ 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.

⁴ This paraphrases the grounds of appeal.

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

There is no arguable case that the General Division erred

[12] In his request for leave to appeal, the Claimant indicated that the General Division didn't follow procedural fairness, based its decision on important errors of fact, and made errors of law and jurisdiction.⁶ He gives the following examples of how the General Division made these errors:

- a) His employer broke the Collective Agreement, the Canada Labour Code and the Charter;
- b) He did not know he was going to lose his job;
- c) He was not suspended for misconduct because he did not attest to his vaccination status to his employer who did not make him aware; and
- d) He has been paying into EI his entire career and has never used it.⁷

[13] I have considered whether these examples show any important errors of fact or law by the General Division.

[14] The General Division found that the Claimant was suspended because he did not attest to his vaccination status.⁸ His employer's policy required employees who were actively at work to confirm their vaccination status by November 12, 2021. Those who did not attest would be placed on a leave of absence without pay after November 26, 2021.⁹

[15] The General Division took into consideration the Claimant's arguments that he did not know why he had been suspended, and that the employer breached his collective agreement.¹⁰ It considered all relevant facts and determined that the reason for the Claimant's suspension was that he did not disclose his vaccination status.

⁶ AD1-4

⁷ AD1-4 and AD1-5

⁸ General Division decision at para 20.

⁹ General Division decision at para 19.

¹⁰ General Division decision at para 17.

[16] The General Division found that the Claimant breached the employer's policy. In deciding whether he did so wilfully, the General Division considered the Claimant's testimony that he did not know why he was not allowed to work on November 29, 2021 and that it was the first time he heard about his employer's policy.¹¹

[17] The General Division did not find the Claimant's testimony to be credible and explained its reasons for this finding. It pointed to inconsistent statements that he made to the Commission in the past and statements from the employer.¹² The General Division found that the Claimant understood he could be placed on leave and he made a choice not to accept or comply with the employer's vaccination policy.¹³

[18] The General Division considered the facts and arguments raised in the Claimant's request for leave to appeal. There is no arguable case that the General Division made an important error of fact.

[19] The General Division properly stated the law concerning misconduct. It considered all relevant facts and found that the Commission had proven that the Claimant was suspended from his job because of misconduct. There is no arguable case that the General Division made an error of law.

[20] The Claimant's argument that he has been paying into EI and has never used it relates to the fairness of the employment insurance program and his belief that benefits should be available to him because he contributed. This argument does not relate to any potential errors by the General Division.

[21] The Claimant also argues in his request for leave to appeal that he intends to sue the employment insurance program, that the denial of benefits is evil, that COVID-19 was a "scamdemic" and that he does not need to suffer because he is young and

¹¹ General Division decision at para 33.

¹² General Division decision at para 34.

¹³ General Division decision at para 42.

healthy.¹⁴ I find that these arguments do not point to any potential errors by the General Division.

[22] Aside from the Claimant's arguments, I have also considered the grounds of appeal checked off on the request for leave to appeal. The Claimant has not pointed to any procedural unfairness on the part of the General Division and I see no evidence of procedural unfairness. There is no arguable case that the General Division made an error of jurisdiction and the Claimant has not provided any examples of this potential error.

[23] 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

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

Melanie Petrunia
Member, Appeal Division

¹⁴ AD1-5