



Citation: *SR v Canada Employment Insurance Commission*, 2022 SST 1520

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

# **Leave to Appeal Decision**

**Applicant:** S. R.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated September 29, 2022  
(GE-22-2208)

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**Tribunal member:** Melanie Petrunia

**Decision date:** December 28, 2022

**File number:** AD-22-788

## Decision

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

## Overview

[2] The Applicant, S. R. (Claimant), was suspended from her job as a business analyst because she did not comply with the employer's COVID-19 vaccination policy. She 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 decided that the Claimant was disentitled from receiving benefits. The Claimant requested a reconsideration and the Commission maintained its decision.

[4] Claimant appealed the reconsideration decision to the Tribunal's General Division. The General Division dismissed the appeal. It found that the Claimant was suspended from her job because of misconduct and she 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, she needs permission for her appeal to move forward.

[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.

## Preliminary matter

[7] In her application for leave to appeal, the Claimant did not state what error or errors she thinks that the General Division made.<sup>1</sup> The Tribunal wrote to the Claimant to

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<sup>1</sup> AD1-5

ask for more information about why she is appealing the General Division decision.<sup>2</sup> The letter gave the Claimant two weeks to provide more information. A navigator with the Tribunal spoke with the Claimant to be sure that she received the letter. The Claimant did not provide anything further.

[8] I am satisfied that the Claimant has had a fair opportunity to explain her reasons for appealing the General Division decision.

## Issue

[9] Does the Claimant raise any reviewable error of the General Division upon which the appeal might succeed?

## Analysis

[10] 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>3</sup>

[11] 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>4</sup>

[12] 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;

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<sup>2</sup> Sending letters in this kind of situation is consistent with what the Federal Court discussed in a case called *Bossé v Canada (Attorney General)*, 2015 FC 1142.

<sup>3</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>4</sup> DESD Act, s 58(2).

c) based its decision on an important factual error;<sup>5</sup> or

d) made an error in law.<sup>6</sup>

[13] 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 her case and possibly win. I should also be aware of other possible grounds of appeal not precisely identified by the Claimant.<sup>7</sup>

### **There is no arguable case that the General Division erred**

[14] As discussed above, the Claimant did not specify any errors of the General Division in her application for leave to appeal. She states that she has contributed to employment insurance throughout her working years. She has been forcibly placed on unpaid leave and it is inhumane to deny her EI benefits.<sup>8</sup>

[15] At the General Division, the Claimant argued that she was not ready to be vaccinated for health reasons and her employer denied her a medical exemption. The General Division took her arguments into consideration. It found that it isn't within the jurisdiction of the Tribunal to decide whether the employer's policy was fair or reasonable. The General Division noted that there are other venues for the Claimant to pursue these arguments.<sup>9</sup>

[16] The Claimant's arguments seem to relate to the fairness of the employment insurance program and her belief that benefits should be available to her because she

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<sup>5</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>6</sup> This paraphrases the grounds of appeal.

<sup>7</sup> *Karadeolian v Canada (Attorney General)*, 2016 FC 615; *Joseph v Canada (Attorney General)*, 2017 FC 391.

<sup>8</sup> AD1-5

<sup>9</sup> General Division decision at para 21.

contributed. This argument does not relate to any potential errors by the General Division.

[17] The General Division properly stated the law concerning misconduct. It found that the Claimant was suspended because she did not comply with her employer's vaccination policy.<sup>10</sup> It found that she was aware of the policy and the consequences of not complying.<sup>11</sup> The General Division considered all relevant facts and found that the Commission had proven that the Claimant was suspended from her job because of misconduct.

[18] Aside from the Claimant's arguments, I have also considered the grounds of 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. I have not identified any errors of law and there is no arguable case that the General Division made an important mistake about the facts in its decision.

[19] 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**

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

Melanie Petrunia  
Member, Appeal Division

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<sup>10</sup> General Division decision at para 14.

<sup>11</sup> General Division decision at para 21.