



Citation: *AS v Canada Employment Insurance Commission*, 2023 SST 90

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

**Leave to Appeal Decision**

**Applicant:** A. S.

**Respondent:** Canada Employment Insurance Commission

---

**Decision under appeal:** General Division decision dated December 6, 2022  
(GE-22-2707)

---

**Tribunal member:** Melanie Petrunia

**Decision date:** January 30, 2023

**File number:** AD-22-924

## **Decision**

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

## **Overview**

[2] The Applicant, A. S. (Claimant), was placed on an unpaid leave of absence from his job because he did not comply with the 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 Claimant was suspended and the reason for the 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 from his job 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 based its decision on important errors of fact, made an error of law and an error of 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.

## **Issues**

[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?<sup>1</sup>

[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).<sup>2</sup>

[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;<sup>3</sup> or

d) made an error in law.<sup>4</sup>

[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.<sup>5</sup>

---

<sup>1</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>2</sup> DESD Act, s 58(2).

<sup>3</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>4</sup> This paraphrases the grounds of appeal.

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

## **Background**

[12] The Claimant's employer introduced a policy concerning vaccination against COVID-19. The Claimant submitted a request for an exemption from the policy based on religious beliefs. He continued working while the request was considered but was put on an administrative leave of absence after the request was denied.

[13] The Commission decided that the Claimant was suspended and the reason for the suspension was misconduct. It decided that he was disentitled from receiving EI benefits. The Claimant appealed this decision to the Tribunal's General Division.

[14] The General Division dismissed the Claimant's appeal. It found that the Claimant was suspended from his job because of misconduct. It found that the Claimant did not follow the employer's vaccination policy and knew or should have known the consequences.<sup>6</sup>

## **I am not giving the Claimant permission to appeal**

[15] In his request for leave to appeal, the Claimant argues that the General Division erred in law and jurisdiction and based its decision on important errors of fact.<sup>7</sup> In his reasons for appeal, however, he points to factual errors that he thinks the General Division made in its decision. The Claimant does not explain why he believes that the General Division made an error of jurisdiction.

[16] The Claimant argues that the General Division made a number of factual errors. He says that he was not suspended but put on an administrative leave. He argues that he did comply with the vaccination policy by requesting a religious exemption and he was told by his employer that his leave was not for misconduct.

[17] The Claimant also argues that the General Division erred in finding that he knew he could be suspended for not complying, and he only knew that he could be placed on

---

<sup>6</sup> General Division decision at para 40.

<sup>7</sup> AD1-3

an administrative leave. He says that he was reassured by his employer that he was not committing misconduct and that he never said he disagreed with the employer's policy.

[18] Many of the factual findings that the Claimant takes issue with concern the General Division's characterization of his leave of absence as a suspension. It was clear that the Claimant was placed on a leave of absence by his employer after his exemption request was denied.

[19] The Claimant was no longer working because he was not in compliance with vaccination policy, not because he chose to take a leave of absence. I find that there is no arguable case that the General Division erred in fact or law by referring to this as a suspension.

[20] There is no arguable case that the General Division based its decision on an important error of fact by finding that the Claimant did not comply with the employer's vaccination policy. The Claimant requested an exemption on religious grounds and was permitted to continue working until a decision was made. Once the request was denied the Claimant was not in compliance with the policy.

[21] The Claimant argues that the General Division made a factual error in finding that he did not get vaccinated. He says that he never told anyone his vaccination status and it is personal medical information.

[22] The Claimant provided a copy of the grievance that he filed in which he states that the workplace was "trying to force [him] to get vaccinated and punishing [him] for [his] refusal."<sup>8</sup> There is no arguable case that the General Division erred in finding that the Claimant was not in compliance with the policy.

[23] The Claimant argues that the General Division erred in finding that his actions were misconduct. He says that his employer told him that there was no misconduct.

[24] The General Division addressed this argument in its decision. It found that the employer's characterization of whether or not there was misconduct is not

---

<sup>8</sup> GD3-31

determinative. The General Division cited a decision of the Federal Court of Appeal which supports this finding.<sup>9</sup>

[25] There is no arguable case that the General Division erred in law or based its decision on an important error of fact when it found that there was misconduct, regardless of whether the employer told the Claimant there was.

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

[27] Aside from the Claimant's arguments, I have also considered other 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.

[28] 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**

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

Melanie Petrunia  
Member, Appeal Division

---

<sup>9</sup> See General Division decision at para 48 citing *Canada (Attorney General) v Boulton*, 1996 FCA 1682.

<sup>10</sup> General Division decision at para 38.