



Citation: *RJ v Canada Employment Insurance Commission*, 2023 SST 166

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: R. J.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated November 17, 2022
(GE-22-2047)

Tribunal member: Melanie Petrunia

Decision date: February 15, 2023

File number: AD-22-937

Decision

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

Overview

[2] The Applicant, R. J. (Claimant), was dismissed from his job because he did not comply with 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 dismissal was misconduct. It disqualified 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 dismissed because of misconduct and he is disqualified 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 made errors of law.

[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.

I am not giving the Claimant permission to appeal

[12] In his request for leave to appeal, the Claimant indicated that the General Division made errors of law.⁶ He gives the following examples of how the General Division made these errors:

- a) His letter says that his termination was “without cause”;
- b) He was terminated because of his religious beliefs and the General Division ignored this; and
- c) Both the Tribunal and EI have discriminated against him based on his religious beliefs.⁷

[13] I have considered whether these examples raise an arguable case that the General Division erred in law.

[14] The Claimant made these arguments at the General Division, and they are considered in its decision.⁸ The General Division acknowledged the Claimant’s position that his was terminated “without cause” and the employer never mentioned misconduct. It found that it is required to consider the facts of the case and decide whether there was misconduct.⁹

[15] The General Division also considered the Claimant’s arguments that he was discriminated against by his employer. It found that the Claimant requested an exemption from the policy on religious grounds but was denied.¹⁰

[16] The General Division found that it had to focus on the Claimant’s actions when considering whether there was misconduct.¹¹ It found that the Claimant lost his job because he failed to comply with the employer’s vaccination policy.¹² It also found that

⁶ AD1-4

⁷ AD1-4

⁸ General Division decision at para 14.

⁹ General Division decision at para 41.

¹⁰ General Division decision at para 24.

¹¹ General Division decision at para 46.

¹² General Division decision at para 40.

the Claimant was aware that failing to comply with the employer's policy could lead to his dismissal.¹³

[17] The General Division found that issues such as whether the Claimant was wrongfully dismissed, or whether his human rights were violated based on religious beliefs are not for it to decide.¹⁴ The General Division found that the only issue it had to decide was whether the Claimant lost his job because of misconduct.¹⁵

[18] The General Division cited decisions of the Federal Court and Federal Court of Appeal. These decisions have said that it is not the employer's conduct that is in issue when considering misconduct, and these issues can be dealt with in other forums Federal Court.¹⁶

[19] There is no arguable case that the General Division made an error of law. It acknowledged the Claimant's arguments and explained its reasons for not accepting them. The General Division properly cited applied the relevant case law and considered all relevant facts in making its decision.

[20] 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 or based its decision on an important mistake about the facts.

[21] 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.

¹³ General Division decision at para 36.

¹⁴ General Division decision at para 45.

¹⁵ General Division decision at para 46.

¹⁶ General Division decision at footnote 18 references *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36 and *Canada (Attorney General) v McNamara*, 2007 FCA 107 and *Paradis v Canada (Attorney General)*, 2016 FC 1281 (*Paradis*).

Conclusion

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

Melanie Petrunia
Member, Appeal Division