



[TRANSLATION]

Citation: *AA v Canada Employment Insurance Commission*, 2023 SST 628

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: A. A.

Respondent: Canada Employment Insurance Commission
Representative: Julie Meilleur

Decision under appeal: General Division decision dated July 19, 2022
(GE-22-1218)

Tribunal member: Jude Samson

Type of hearing: In person

Hearing date: February 23, 2023

Hearing participants: Appellant
Respondent's representative

Decision date: May 23, 2023

File number: AD-22-755

Decision

[1] I am dismissing the Claimant (A. A.)'s appeal. This means that he is disqualified from receiving Employment Insurance (EI) regular benefits.

Overview

[2] The Claimant worked as a machine operator. In October 2022, his employer let him go for refusing an assignment to another position. So the Claimant applied for EI regular benefits.

[3] The Canada Employment Insurance Commission (Commission) decided that the Claimant was disqualified from receiving benefits because his employer had let him go for misconduct.

[4] The Claimant appealed the Commission's decision to the Tribunal's General Division, but it dismissed his appeal.

[5] The Claimant is now appealing the General Division decision to the Appeal Division. He argues that the General Division didn't consider a relevant issue, namely whether the employer had the right to redistribute the work of his department as it did.

[6] The Claimant hasn't established that the General Division failed to consider a relevant issue. So I am dismissing his appeal.

Issue

[7] Did the General Division fail to consider whether the employer had the right to redistribute the work of the Claimant's department as it did?

Analysis

[8] The law allows me to intervene in this case if the General Division failed to consider a relevant issue.¹

The General Division considered the relevant issue

[9] The issue before the General Division was whether the Claimant lost his job because of misconduct.

[10] The law says that you are disqualified from receiving EI benefits if you lost your job because of misconduct.² Misconduct doesn't require that the person have wrongful intent, but that the act complained of be wilful.³

[11] The Claimant argues that the General Division didn't consider an explanation he gave at the hearing. Specifically, the Claimant testified that there were two people who worked as machine operators: he worked at night and another person worked during the day. The other employee was absent, so the employer brought someone from another department to help with the workload.

[12] But, once the workload was reduced, the employer didn't dismiss this employee with less seniority in his original department, but let him continue doing the same work as the Claimant.

[13] The Claimant disputes the employer's right to redistribute work in this way, falsely creating a situation where there wasn't enough work for the Claimant in his own position.

[14] According to the Claimant, the employer created this situation to justify its decision to reassign him to a more physically demanding position and then let him go when he refused the reassignment.

¹ See section 58(1)(a) of the *Department of Employment and Social Development Act* (DESD Act).

² Section 30 of the *Employment Insurance Act* sets out this consequence.

³ See *Canada (Attorney General) v Lemire*, 2010 FCA 314 at paras 11-16; and *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36 at para 14.

[15] The General Division acknowledged the Claimant's argument at paragraphs 23 and 24 of its decision and considered it at paragraphs 31 to 33.

[16] Logically, the Claimant's argument is based on the fact that the two employees—he and the person who came to help him—were able to perform the same tasks.

[17] But the General Division rejected this assumption based on evidence in the appeal file.⁴ While the Claimant may disagree with this finding, he hasn't met the high standard of establishing that it was an erroneous finding of fact.⁵

[18] In short, the Claimant was unhappy with how the employer redistributed work in his department. He filed a complaint with his union. In addition, he refused to be reassigned to a different position and went home. The Claimant's dismissal was foreseeable given his refusal to work. In this situation, the law says that a person is disqualified from receiving EI benefits.

Conclusion

[19] I am dismissing the Claimant's appeal. The General Division didn't fail to consider a relevant issue. Instead, it overlooked a material fact on which the Claimant's argument was based.

Jude Samson
Member, Appeal Division

⁴ See the General Division decision at para 32.

⁵ See section 58(1)(c) of the DESD Act and *Walls v Canada (Attorney General)*, 2022 FCA 47 at paras 41 to 43.