



Citation: *TR v Canada Employment Insurance Commission*, 2023 SST 515

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: T. R.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated March 6, 2023
(GE-22-3708)

Tribunal member: Melanie Petrunia

Decision date: April 25, 2023

File number: AD-23-249

Decision

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

Overview

[2] The Applicant, T. R. (Claimant), went on a vacation and did not return to his job when his employer expected him. The employer terminated the Claimant and he applied for employment insurance (EI) regular benefits.

[3] The Respondent, the Canada Employment Insurance Commission (Commission) decided that the Claimant voluntarily left his job without just cause and disqualified him from receiving EI benefits.

[4] The Claimant appealed the Commission's decision to the Tribunal's General Division. The General Division dismissed his appeal. It found that the Claimant lost his job because of misconduct and was disqualified from receiving EI benefits.

[5] The Claimant now wants to appeal the General Division decision to the Appeal Division. However, he needs permission for his 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.

Issue

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

I am not giving the Claimant permission to appeal

[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.

– **The General Division decision**

[12] The General Division considered what triggered the Claimant's loss of employment. It found that the Claimant was authorized by his employer to take a three-week vacation. The Claimant was due back at work on May 30, 2022.⁶

[13] The Claimant went to Sri Lanka. His return flight was initially booked for May 26, 2022. The Claimant developed a rash and was not comfortable travelling so he rebooked his flight for June 6, 2022. He did not inform his employer that he had rebooked his flight and wouldn't be returning to work on May 30, 2022.⁷

[14] The employer tried to contact the Claimant when he did not return on May 30th but was not able to reach him. It sent him a letter dated June 6, 2022 stating that his employment was terminated immediately.

[15] The General Division found that the Claimant did not voluntarily leave his job. It found that the termination by the employer is what triggered the loss of employment.⁸

[16] The General Division then reviewed the key legal principles concerning misconduct.⁹ It found that the Claimant's decision not to return to work or advise his employer constitutes misconduct. It based this finding on the following facts:

- a) The Claimant had to obtain authorization to take vacation and was expected back on May 30th;
- b) The Claimant's return date was important to the employer;
- c) The Claimant had a key role with the company and had to train people to cover his duties while he was away;

⁶ General Division decision at para 25.

⁷ General Division decision at para 28.

⁸ General Division decision at para 19.

⁹ General Division decision at paras 22 and 23.

- d) The Claimant changed his return flight to Canada and did not inform his employer;
- e) The Claimant did not contact his employer until June 12, 2022, after he learned that they had sent the termination letter.¹⁰

[17] The General Division found that the Claimant should have known that his conduct would get in the way of carrying out his obligations to his employer, and that termination was possible.¹¹

– **No arguable case that the General Division erred**

[18] The Claimant checked off all of the potential grounds of appeal in his application for leave to appeal. In his reasons for appeal, the Claimant states that he does not agree that he voluntarily left his job.¹² This is consistent with the General Division's finding that he was terminated and does not amount to a potential ground of appeal.

[19] The Claimant is largely restating the arguments that he made at the General Division and explains why he did not return to Canada when he initially planned. The Claimant does not identify any factual errors in the General Division decision. The General Division accepted the Claimant's reasons for not returning but found that this amounted to misconduct. I see no error in the General Division's decision.

[20] The Claimant argues that he believes that he was unjustly dismissed by his employer. He relies on the Canada Labour Code.¹³ The General Division addressed this argument in its decision. It found that it is not within the Tribunal's jurisdiction to consider whether the Claimant was wrongfully dismissed or if he has any recourse under other laws. The Tribunal can only consider what the Claimant did and whether this amounts to misconduct.¹⁴

¹⁰ General Division decision at para 25.

¹¹ General Division decision at para 29.

¹² AD1-9

¹³ AD1-14

¹⁴ General Division decision at para 30.

[21] There is no arguable case that the General Division made an error of law when it made this determination. This is a well-established principle in the case law from the Federal Court and the Federal Court of Appeal.¹⁵

[22] 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.

[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

¹⁵ See *Canada (Attorney General) v Marion*, 2002 FCA 185, *Mishibinijima v. Canada (Attorney General)*, 2007 FCA 36 and *Paradis v. Canada (Attorney General)*, 2016 FC 1282.