



Citation: *JR v Canada Employment Insurance Commission*, 2023 SST 577

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: J. R.

Respondent: Canada Employment Insurance Commission
Representative: Josée Lachance

Decision under appeal: General Division decision dated September 23, 2022
(GE-22-1694)

Tribunal member: Janet Lew

Type of hearing: In Writing

Decision date: May 4, 2023

File number: AD-23-174

Decision

[1] The appeal is allowed. The matter will be going to a different member of the General Division for reconsideration.

Overview

[2] The Appellant, J. R. (Claimant), is appealing the General Division decision. The General Division summarily dismissed the appeal of the Claimant.

[3] The General Division found that the Claimant had been suspended and then later dismissed from his employment due to misconduct. The Claimant had not complied with his employer's vaccination policy. This meant that the Claimant was disentitled from receiving Employment Insurance benefits during the suspension, and then disqualified from benefits once he was dismissed.

[4] The General Division did not hold a hearing to address the misconduct issue. The General Division found that it would have made no difference if the Claimant presented new evidence or made other arguments. The General Division determined that the Claimant's appeal had no reasonable chance of success in that the appeal was bound to fail.

[5] The Claimant argues that the General Division failed to follow the rules of procedural fairness. He also argues that the General Division made jurisdictional, legal, and factual errors.

[6] The Respondent, the Canada Employment Insurance Commission (Commission), accepts that the General Division erred in law in summarily dismissing the Claimant's appeal. The Commission says that appeals of misconduct cases are not clearly bound to fail, so the General Division should not have summarily dismissed the Claimant's appeal.

Issue

[7] Did the General Division make an error by summarily dismissing the Claimant's appeal?

Analysis

[8] The Appeal Division may intervene in General Division decisions if there are jurisdictional, procedural, legal, or certain types of factual errors.

Did the General Division make an error by summarily dismissing the Claimant's appeal?

[9] The General Division determined that the evidence was undisputed that:

- The Claimant's employer implemented a vaccination policy that applied to all employees
- the Claimant was informed of the policy and given time to comply with it
- the Claimant refused to comply with the policy when he failed to provide proof of vaccination by the deadlines set out in the policy
- the Claimant made a conscious, deliberate, and intentional choice not to be vaccinated. The General Division found the Claimant's refusal to comply with the policy to be wilful.
- the Claimant was aware of the consequences of non-compliance, and
- the Claimant's refusal to comply with the policy was the direct cause of his unpaid leave of absence and subsequent dismissal

[10] The General Division found that the evidence supported a conclusion that the Claimant's wilful refusal to comply with the policy was misconduct under the *Employment Insurance Act*.

[11] The General Division also found there was nothing the Claimant could have added to his appeal to change the outcome.

[12] The General Division referred to section 53(1) of the *Department of Employment and Social Development Act*. The section requires the General Division to summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success.

[13] The General Division found that it was clear from the record that the Claimant's appeal did not have any reasonable chance of success and that his appeal was bound to fail. For that reason, it summarily dismissed the Claimant's appeal.¹

[14] The Commission notes that the Federal Court of Appeal has held that an appeal should only be summarily dismissed when it is obvious that the appeal is bound to fail no matter what evidence or arguments might be presented at a hearing.²

[15] The Commission argues that the Claimant's case is unlike other cases where an appeal is bound to fail. Cases where an appeal is clearly bound to fail include ones in which a claimant does not meet the qualifying conditions, has insufficient insurable hours, or has reached the maximum number of weeks paid for sickness benefits.

[16] The Commission argues that appeals of misconduct cases are not clearly bound to fail because there could be evidence or arguments submitted at a hearing that could change the outcome. So, the Commission says that it was not appropriate then for the General Division to have summarily dismissed the matter.

[17] I accept the parties' arguments that the General Division made an error by choosing to summarily dismiss the appeal. The General Division should not have relied on the procedure as a means to give a decision on the record, in light of the Claimant's evidence and arguments and the nature of the issues involved.

¹ See General Division decision, at para 25.

² See Commission's representations to the Social Security Tribunal—Appeal Division (SST-AD), filed March 23, 2023, at AD 2-3, citing *Lessard-Gauvin v Canada (Attorney General)*, 2013 FCA 147.

Remedy

[18] The Claimant may have more evidence. It is clear that the Claimant wishes to expand on some of his arguments.

[19] The Claimant argues that his case is similar to *A.L. v Canada Employment Insurance Commission*.³ In that case, the General Division found that A.L. was not disqualified from receiving Employment Insurance benefits. He says that because of the similarities in his case with A.L., he too should not face disqualification from benefits.

[20] It would be unfair to deprive the Claimant of the chance to fully present his case. He is asking for a review of his case.

[21] The Commission asks the Appeal Division to send the matter back to the General Division for reconsideration. That is the appropriate remedy in this case. It will give both the Claimant and the Commission a fair opportunity to present their respective cases.

Conclusion

[22] The appeal is allowed. I am returning this matter to a different member of the General Division for reconsideration.

Janet Lew
Member, Appeal Division

³ *A.L. v Canada Employment Insurance Commission*, 2022 SST 1428.