



Citation: *SS v Canada Employment Insurance Commission*, 2023 SST 518

Social Security Tribunal of Canada Appeal Division

Decision

Appellant:	S. S.
Respondent:	Canada Employment Insurance Commission
Representative:	Rebekah Ferriss
<hr/>	
Decision under appeal:	General Division decision dated November 7, 2022 (GE-22-1360)
<hr/>	
Tribunal member:	Melanie Petrunia
Type of hearing:	Teleconference
Hearing date:	March 8, 2023
Hearing participants:	Appellant Respondent's representative
Decision date:	April 25, 2023
File number:	AD-22-832

Decision

[1] The appeal is dismissed. The General Division did not make any reviewable errors.

Overview

[2] The Appellant, S. S. (Claimant) was employed as a security guard. His employer implemented a policy requiring vaccination against COVID-19. The Claimant requested a medical exemption and it was denied by the employer. The Claimant was placed on an unpaid leave of absence and then dismissed for not complying with the policy.

[3] The Claimant applied for EI regular benefits. The Respondent, the Canada Employment Insurance Commission (Commission), decided that the Claimant was suspended and then dismissed because of his own misconduct and he could not be paid benefits.

[4] The Claimant appealed the Commission's decision to the Tribunal's General Division. The General Division decided the Commission had proven that the Claimant was suspended from and lost his job due to misconduct. So, he could not be paid benefits.

[5] The Claimant is now appealing the General Division decision. He argues that the General Division made numerous errors in its decision.

[6] I am dismissing the Claimant's appeal. The General Division did not make any reviewable errors in its decision. The Claimant was suspended and then dismissed due to misconduct and cannot be paid EI benefits.

Issues

[7] The issues in this appeal are:

- a) Did the General Division breach procedural fairness?

- b) Did the General Division err in law by failing to consider the Claimant's arguments concerning the *Canadian Bill of Rights*?
- c) Did the General Division make an error of jurisdiction by following the Commission's findings?
- d) Did the General Division base its decision on any factual errors?

Analysis

[8] I can intervene in this case only if the General Division made a relevant error. So, I have to consider whether the General Division:¹

- failed to provide a fair process;
- failed to decide an issue that it should have decided, or decided an issue that it should not have decided;
- misinterpreted or misapplied the law; or
- based its decision on an important mistake about the facts of the case.

The General Division did not make any reviewable errors

[9] The General Division decision had to decide why the Claimant stopped working and whether this reason amounted to misconduct under the law.

[10] The General Division found that the Claimant was put on an unpaid leave of absence on October 16, 2021 and then dismissed on December 9, 2021 for failing to comply with this employer's vaccination policy.² It found that this reason for his suspension and dismissal did amount to misconduct.³

¹ The relevant errors, formally known as "grounds of appeal," are listed under section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

² General Division decision at para 14.

³ General Division decision at para 39.

[11] The General Division summarized the key legal principles from the relevant case law.⁴ It took into consideration the policy that was implemented by the Claimant's employer. This policy stated that employees had to provide proof of vaccination by October 15, 2021.⁵

[12] There was an exemption available for medical or human rights reasons. The policy set out the requirements for a medical exemption. It also stated that employees who did not provide proof of vaccination or an exemption would be subject to termination for willful misconduct and insubordination.⁶

[13] The General Division found that the Claimant was provided with a copy of the policy and that he reviewed it.⁷ It found that the Claimant was not exempt.⁸ The Claimant had relied on a medical note from his doctor. The employer had asked him to have a specific medical exemption form completed by his healthcare provider but he did not do so. The General Division found that the Claimant's exemption request was not approved by the employer.⁹

[14] The General Division found that the Claimant knew or ought to have known that he would be suspended and terminated if he did not comply with the policy.¹⁰ For these reasons, it decided that the Commission had proven that the Claimant was suspended and then lost his job because of misconduct.

– **The General Division followed procedural fairness**

[15] The Claimant argues that the General Division did not follow procedural fairness because his witnesses were not sworn in. I find that failing to swear in the Claimant's witnesses does not amount to a breach of procedural fairness.

⁴ General Division decision at paras 17 to 23.

⁵ General Division decision at para 26.

⁶ General Division decision at para 26.

⁷ General Division decision at para 28.

⁸ General Division decision at para 30.

⁹ General Division decision at para 36.

¹⁰ General Division decision at para 37.

[16] The rules of evidence are less strict at the Tribunal than at a court. The Appellant's witnesses were able to testify and provide evidence. There is no evidence that the General Division gave the testimony less weight because the witnesses were not sworn. The General Division referred to the testimony of these witnesses with no indication that it was not considered because they were not sworn in.¹¹

– **The General Division did not err by not addressing the Bill of Rights**

[17] The Claimant argues that the General Division erred in law by failing to take into consideration the arguments he made concerning the *Canadian Bill of Rights*.¹² He says that he has protected rights under sections 1(a) and 1(b). The Claimant refers to submissions that he filed with the General Division which he argues were not properly considered.¹³

[18] The General Division did not explicitly address this argument in its decision. It acknowledged that the Claimant made additional arguments concerning his employer failing to accommodate and harassing and intimidating him. He also argued that he was wrongfully dismissed.¹⁴

[19] In response to these additional arguments, the General Division found that it cannot determine whether the dismissal or penalty was justified. It can only determine whether the Claimant's conduct amounted to misconduct.¹⁵ It also stated that that Claimant can pursue these arguments in another tribunal or court.¹⁶

[20] In the submissions that the Claimant made before the General Division concerning the Bill of Rights, he focused on the conduct of his employer in harassing and unlawfully firing him. He also took issue with the Commission failing to investigate

¹¹ General Division decision at para 42.

¹² *Canadian Bill of Rights*, S.C. 1960, c. 44

¹³ The Claimant refers to GD18.

¹⁴ General Division decision at para 43.

¹⁵ General Division decision at para 44.

¹⁶ General Division decision at para 45.

the employer's policy and separating people into groups of vaccinated and unvaccinated.¹⁷

[21] In its decision, the General Division does not explicitly reference the Bill of Rights but notes the Claimant's additional arguments concerning the treatment he received from his employer which was the focus of his submissions. I find that these were adequately addressed by the General Division when it found that the law does not permit it to consider the conduct of the employer.

[22] A recent decision of the Federal Court also confirmed that the Tribunal cannot consider the conduct of the employer.¹⁸ In that case, the Court agreed that an employee who made a deliberate decision not to follow his employer's vaccination policy had lost his job due to misconduct. That claimant could pursue his claims that he was wrongfully dismissed or his human rights were violated in other forums.

[23] The General Division is not required to address every argument advanced by a claimant. The reasons must be sufficient to understand why the decision was made.¹⁹ I find that the General Division's reasons are clear as to why it did not address arguments by the Claimant concerning the conduct of the employer.

– **The General Division did not make an error of jurisdiction**

[24] The Claimant argues that the General Division made an error of jurisdiction by following the Commission's findings without investigating the facts. He says that he did everything his employer required in a respectful and timely manner. He says that this is not misconduct and that the General Division decided something that it was persuaded to decide without properly analyzing the facts.

[25] I find that this argument does not amount to an error of jurisdiction. The General Division had to decide why the Claimant was suspended and then dismissed from his

¹⁷ GD18-1

¹⁸ See *Cecchetto v. Canada (Attorney General)*, 2023 FC 102.

¹⁹ *Canada (Attorney General) v. Hoffman*, 2015 FC 1348 at para 43.

job and whether this reason is considered misconduct under the law. It decided both of these questions in its decision.

[26] The Claimant takes issue with the findings made by the General Division because they are consistent with the findings made by the Commission. The General Division explained why it made the findings it did with reference to the evidence in the file. The General Division did not make an error of jurisdiction or base its decision on any factual errors when it made these determinations.

– **The General Division did not base its decision on an important factual error**

[27] The Claimant argues that he did not choose to leave work on an unpaid leave or be suspended. He expected his employer to accommodate his human rights. He says that he provided his employer with a doctor's note which clearly supported an exemption.

[28] The Claimant argues that the policy said that an exemption would be granted for medical reasons and he provided all necessary information. He argues that the requirement in the policy to waive confidentiality violates human rights and privacy legislation.

[29] I find that the relevant facts were taken into consideration by the General Division in its decision. The General Division cited the wording of the policy and noted what was required by an employee seeking an exemption for medical reasons.²⁰ The Claimant confirmed that he did not take the required steps in the policy and the employer did not grant his exemption request.²¹

[30] The General Division considered the note from the Claimant's doctor and specifically refers to it in its decision. The Claimant was asked questions about the note. The General Division determined that, according to the policy, the medical proof had to be satisfactory to the employer and the Claimant's note was not.²²

²⁰ General Division decision at para 33.

²¹ General Division decision at para 35.

²² General Division decision at para 36.

[31] The General Division did not consider whether the policy violated the claimant's privacy or human rights. The General Division found, as discussed above, that it can only consider the conduct of the Claimant when determining whether or not there was misconduct. The Tribunal does not have the jurisdiction to decide whether the employer infringed the Claimant's rights when it applied the policy to him.

[32] The General Division properly cited and applied the law concerning misconduct. It supported its findings with evidence and explained the reasons for its decision. It did not make any reviewable errors when it determined that the Claimant was suspended and then terminated because of misconduct.

Conclusion

[33] The appeal is dismissed.

Melanie Petrunia
Member, Appeal Division