Citation: *GC v Canada Employment Insurance Commission*, 2023 SST 622

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	G. C.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated February 15, 2023 (GE-22-2801)

Tribunal member:	Melanie Petrunia
Decision date:	May 22, 2023
File number:	AD-23-268

Decision

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

Overview

[2]   The Applicant, G. C. (Claimant), was placed on an unpaid leave of absence (suspended) and then dismissed from his job because he did not follow his employer's vaccination policy. He applied for employment insurance (EI) benefits.

[3]   The Respondent, the Canada Employment Insurance Commission (Commission) decided that the Claimant was suspended and then dismissed due to his own misconduct and could not be paid benefits.

[4]   The Claimant appealed this decision to the Tribunal's General Division. The General Division dismissed the appeal. It found that the Commission had proven that the reason for the Claimant's suspension and dismissal is considered misconduct under the *Employment Insurance Act* (EI Act).

[5]   The Claimant is now asking to appeal the General Division decision to the Tribunal's Appeal Division. He argues that the General Division failed to follow procedural fairness. 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.

Issues

[7]   The issues are:

   a) Is there an arguable case that the General Division failed to follow procedural fairness by not giving fair consideration to another Tribunal decision?

b) Does the Claimant raise any other 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

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[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.

argue his case and possibly win. I should also be aware of other possible grounds of appeal not precisely identified by the Claimant.[5]

No arguable case that the General Division did not follow procedural fairness

[12]   The Claimant argues that the General Division did not follow procedural fairness. He says that it did not give fair consideration to another General Division decision that he referred to in the hearing. The Claimant argues that the General Division did not explain why it was not following that decision, only that it was not bound by it.[6]

[13]   The Claimant argues that the decision was not based on reasonable fairness and that there should be some consistency in decisions. He says his case was factual very similar to the one in the decision that he referred to.[7]

[14]   I find that this argument does not have a reasonable chance of success. The decision that the Claimant relied on is *A.L. v. Canada Employment Insurance Commission*. The General Division refers to this decision in its reasons. It acknowledges that the Claimant argues that the facts and arguments in that case were similar to his own.[8]

[15]   The General Division explained that it is not bound by other General Division decisions but can adopt the reasoning if it finds them to be persuasive or helpful. The General Division then explained why it was not following the reasoning in *A.L.* It noted that the decision was recently referred to in a Federal Court decision and that it does not establish a blanket rule that applied to other factual situations, that it is not binding and that it is currently under appeal.[9]

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[5] *Karadeolian v Canada (Attorney General)*, 2016 FC 615; J*oseph v Canada (Attorney General)*, 2017 FC 391.
[6] AD1-3
[7] AD1-3
[8] General Division decision at para 40.
[9] General Division decision at para 41.

[16]   The General Division did not fail to follow procedural fairness by addressing the *A.L.* decision as it did. The general Division is correct that it is not bound by other General Division decisions, and it explained its reasons for not following *A.L.*

[17]   The General Division accurately set out the legal test for misconduct as established by case law from the Federal Court and the Federal Court of Appeal.[10]

[18]   The General Division then applied the legal test, as set out in the case law, to the Claimant's circumstances. It found that the Commission had proven that the Claimant was suspended due to misconduct for the following reasons:

- The employer had a policy requiring employees to be fully vaccinated or have an approved exemption.

- The employer communicated the policy to the Claimant and he knew what was expected of him.

- The Claimant testified that he knew about the policy and the consequences of not complying.

- The Claimant intentionally did not comply with the policy and was suspended then dismissed.[11]

[19]   The Claimant also argues in this application for leave to appeal that the current data on vaccine efficacy shows that his dismissal was senseless. He says that people should have been offered their employment back when these facts began to emerge and that people continue to be needlessly sanctioned.[12]

[20]   I find that these arguments do not amount to any alleged errors by the General Division. The General Division discussed a recent decision of the Federal Court *Cecchetto v. Canada (Attorney General),* in its reasons. This decision confirmed that the

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[10] General Division decision at paras 26 to 35.
[11] General Division decision at para 45.
[12] AD1-3

Tribunal cannot consider the conduct of the employer or the validity of the vaccination policy.[13]

[21]   In *Cecchetto*, the Court agreed that an employee who made a deliberate decision not to follow's his employer's vaccination policy had lost his job due to misconduct. That claimant also made arguments about the safety and efficacy of the vaccine. The Court confirmed that these are not issues that the Tribunal is permitted, by law, to address.[14]

[22]   Aside from the Claimant's arguments, I have also considered the 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 based its decision on an important mistake about the facts or 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

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[13] See *Cecchetto v. Canada (Attorney General),* 2023 FC 102.
[14] See *Cecchetto* at para 32.