



[TRANSLATION]

Citation: *SC v Canada Employment Insurance Commission*, 2023 SST 898

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

**Applicant:** S. C.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated  
April 12, 2023 (GE-22-3842)

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**Tribunal member:** Pierre Lafontaine

**Decision date:** July 10, 2023

**File number:** AD-23-392

## **Decision**

[1] Permission to appeal is refused. The appeal will not proceed.

## **Overview**

[2] The Applicant (Claimant) lost his job because he made an inappropriate comment to his boss after drinking during a conference abroad. He then made a claim for Employment Insurance (EI) regular benefits.

[3] The Respondent (Commission) decided that the Claimant lost his job because of misconduct. Because of this, it decided that he is disqualified from receiving EI benefits. The Claimant asked the Commission to reconsider. It upheld its initial decision. The Claimant appealed to the General Division.

[4] The General Division found that the Claimant made an offensive comment to his boss in the presence of three managers. It found that the Claimant was dismissed for that reason and that he should have known that the employer was likely to dismiss him in these circumstances. The General Division decided that the Claimant lost his job because of misconduct.

[5] The Claimant seeks permission from the Appeal Division to appeal the General Division decision. However, he has not identified any grounds of appeal.

[6] A letter was sent to the Claimant asking him to explain the reasons for his appeal in detail. No response was received by the deadline.

[7] I have to decide whether there is an arguable case that the General Division made a reviewable error based on which the appeal has a reasonable chance of success.

[8] I am refusing permission to appeal because the Claimant has not raised a ground of appeal based on which the appeal has a reasonable chance of success.

## Issue

[9] Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

## Analysis

[10] Section 58(1) of the *Department of Employment and Social Development Act* specifies the only grounds of appeal of a General Division decision. These reviewable errors are the following:

1. The General Division hearing process was not fair in some way.
2. The General Division did not decide an issue it should have decided. Or, it decided something it did not have the power to decide.
3. The General Division based its decision on an important error of fact.
4. The General Division made an error of law when making its decision.

[11] An application for permission to appeal is a preliminary step to a hearing on the merits. It is an initial hurdle for the Claimant to meet, but it is lower than the one that must be met at the hearing of the appeal on the merits. At the permission to appeal stage, the Claimant does not have to prove his case; he must instead establish that the appeal has a reasonable chance of success. In other words, he must show that there is arguably a reviewable error based on which the appeal might succeed.

[12] I will give permission to appeal if I am satisfied that at least one of the Claimant's stated grounds of appeal gives the appeal a reasonable chance of success.

### **Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?**

[13] The General Division had to decide whether the Claimant lost [*sic*] because of misconduct.

[14] The notion of misconduct does not imply that the breach of conduct needs to be the result of wrongful intent; it is enough that the misconduct be conscious, deliberate, or intentional. In other words, to be misconduct, the act complained of must have been wilful or at least of such a careless or negligent nature that you could say the person wilfully disregarded the effects their actions would have on their performance.

[15] The General Division's role is not to rule on the severity of the employer's penalty or to determine whether the employer was guilty of misconduct by dismissing the Claimant in such a way that his dismissal was unjustified. Its role is to decide whether the Claimant was guilty of misconduct and whether this misconduct led to his dismissal.

[16] The General Division found that the Claimant lost his job because he made an offensive comment to his boss in the presence of three managers while participating in a conference as part of his job. It found that the Claimant should have known that his behaviour went against the employer's rules and could lead to his dismissal. The General Division decided that the Claimant's behaviour amounted to misconduct.

[17] The Claimant admitted making an unacceptable comment to his boss. According to him, he wanted to give his opinion on how to handle files. After his boss replied, he got carried away and said more than he intended. He mentioned trying everything to keep his job the day after the incident by apologizing to his superior and promising not to do it again.

[18] The fact that the Claimant had a momentary lapse in judgment and apologized to his boss soon afterward is of no relevance to whether his conduct constitutes misconduct under the *Employment Insurance Act* (EI Act).<sup>1</sup>

[19] As mentioned by the General Division, it is well established in case law that inappropriate and disrespectful behaviour at work amounts to misconduct under the EI Act.

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<sup>1</sup> *Canada (Attorney General) v Hastings*, 2007 FCA 372.

[20] Unfortunately for the Claimant, an appeal to the Tribunal's Appeal Division is not a new hearing, where a party can present evidence again and hope for a new, favourable decision.

[21] After reviewing the appeal file, the General Division decision, and the arguments in support of the application for permission to appeal, I find that the appeal has no reasonable chance of success. The Claimant has not raised any issue that could justify setting aside the decision under review.

## **Conclusion**

[22] Permission to appeal is refused. The appeal will not proceed.

Pierre Lafontaine  
Member, Appeal Division