



[TRANSLATION]

Citation: *SS v Canada Employment Insurance Commission*, 2023 SST 912

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

# **Leave to Appeal Decision**

**Applicant:** S. S.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated  
April 24, 2023 (GE-22-3436)

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**Tribunal member:** Pierre Lafontaine

**Decision date:** July 14, 2023

**File number:** AD-23-422

## Decision

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

## Overview

[2] The Applicant (Claimant) lost his job. The Claimant's employer said that he was dismissed because he threatened two of his supervisors. He then applied 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 lost his job because he gave his employer an ultimatum. He sent it a text message demanding a deposit within the next 11 hours, or else he would not show up for work anymore and would make a labour standards complaint. The employer immediately terminated his employment. The General Division found that the Claimant was dismissed for that reason and that he should have known that he was jeopardizing his job. It 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. He says that his text message was not a threat against his supervisors. He was available and able to work when his employer terminated his employment. He is the victim, not his employer.

[6] 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.

[7] 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

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

## Analysis

[9] 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.

[10] 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.

[11] 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?**

[12] The Claimant says that his text message was not a threat against his supervisors. He was available and able to work when his employer terminated his employment. He is the victim, not his employer.

[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 gave his employer an ultimatum. He sent it a text message demanding a deposit within the next 11 hours, or else he would not show up for work anymore and would make a labour standards complaint. The employer immediately terminated his employment.

[17] The General Division found that the Claimant was dismissed for that reason and that he should have known that he was jeopardizing his job. It decided that the Claimant lost his job because of misconduct.

[18] Before the General Division, the Claimant did not dispute the text message. He was upset because his partner, who worked for the same employer, had not received the amounts she was owed from the employer.

[19] It is well established in case law that inappropriate and disrespectful behaviour at work amounts to misconduct under the law. As the General Division noted, other avenues existed for the Claimant (or his partner) to assert his rights instead of giving his employer an ultimatum that put his job at risk.

[20] Even if I were to consider that the Claimant quit his job before being dismissed, he did not have just cause for leaving his job within the meaning of the law. A reasonable alternative would have been to let his partner exercise her rights. The other reasonable alternative would have been to look for another job before telling his employer that he was leaving via text message. He has admitted that he did not look for a job.

[21] 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.

[22] 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**

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

Pierre Lafontaine  
Member, Appeal Division