



[TRANSLATION]

Citation: *BC v Canada Employment Insurance Commission*, 2023 SST 1371

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: B. C.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated
July 10, 2023(GE-23-1044)

Tribunal member: Pierre Lafontaine

Decision date: October 11, 2023

File number: AD-23-762

Decision

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

Overview

[2] The Applicant (Claimant) worked as a designer for the employer for four years. The employer said that the Claimant was let go because he was repeatedly absent from the office.

[3] The Respondent, the Canada Employment Insurance Commission (Commission), denied the Claimant's application because he stopped working because of misconduct. Upon reconsideration, the Commission upheld the initial decision. The Claimant appealed to the General Division.

[4] The General Division found that the Claimant lost his job because he was absent from the office. It found that the Claimant knew that he would be let go if he did not go to the office and that was why he lost his job. The General Division found that the Claimant being absent from the office despite his employer's express request constituted misconduct under the law.

[5] The Claimant is now asking the Appeal Division for permission to appeal the General Division decision. He argues that the General Division made errors of fact and law.

[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 grant 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 argues that the General Division made errors of fact and law. He says that he didn't lose his job because of misconduct, since he was authorized to work from home.

[13] The General Division had to verify and interpret the facts of this case and make its own assessment on the issue of misconduct. It is well established that an employer's disciplinary procedure is irrelevant to determine misconduct under the *Employment Insurance Act* (EI Act).¹

[14] The General Division found that the Claimant lost his job because he was absent from the office. It found that he knew that he would be let go if he did not go to the office and that was why he lost his job. The General Division found that the Claimant being absent from the office despite his employer's express request constituted misconduct under the law.

[15] The evidence before the General Division shows that the Claimant was let go because he did not go to the office like his employer asked. In an email dated October 5, 2022, the employer informed him that the ongoing remote work could no longer be authorized and that he had to report to the office on Monday [*sic*], October 11, 2022. He didn't show up. He didn't tell his employer that he was absent. He then stopped reading the employer's emails repeatedly telling him to go to work. The Claimant never went to the office.

[16] The Claimant was told that he could be let go if he did not go to the office. He acknowledged that he had read the October 5, 2022, email, and knew that he would be let go if he did not go to the office on October 11, 2022.²

[17] The Claimant had to take the necessary steps to go back to the office while waiting for his car to meet his commitments to his employer. This is especially true given that the employer insisted that he be at the office to do his job. He could also have obtained a sick note justifying his absences from the office, which he did not do.

¹ *Houle v Canada (Attorney General)*, 2020 FC 1157; *Dubeau v Canada (Attorney General)*, 2019 FC 725.

² See GD3-40.

[18] It is established that absences not authorized by the employer constitute misconduct, since they show carelessness toward the employer.³

[19] Although the parties reached an out-of-court agreement, the evidence doesn't show that the employer changed its story about the unauthorized absence from the Claimant's office that initially led to letting him go.

[20] I am of the view that the General Division decision is based on the evidence that was presented and on the applicable legislative provisions, as interpreted in the case law.

[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 question of fact or law 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

³ *Parsons v Canada (Attorney General)*, 2005 FCA 248.