



[TRANSLATION]

Citation: *KO v Canada Employment Insurance Commission*, 2023 SST 1791

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: K. O.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated
September 20, 2023 (GE-23-1660)

Tribunal member: Pierre Lafontaine

Decision date: December 13, 2023

File number: AD-23-966

Decision

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

Overview

[2] The Applicant (Claimant) lost his job. His employer said that he lost his job because he took a vacation without permission.

[3] The Respondent (Commission) found that the Claimant lost his job because of misconduct. Upon reconsideration, the Commission upheld its initial decision. The Claimant appealed the Commission's reconsideration decision to the General Division.

[4] The General Division found that the Claimant lost his job because he missed work for three consecutive days without a valid reason. It found that the Claimant knew or should have known that he could lose his job for being absent without permission. It found that this was the reason he lost his job. The General Division concluded that the Claimant lost his job because of misconduct.

[5] The Claimant seeks permission to appeal the General Division decision. He says that he contacted human resources during his leave and that his employer and Service Canada made several mistakes about dates and facts. The Claimant argues that he was never notified of his employer's refusal.

[6] I must 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 on the hearing of the appeal on the merits. At the permission to appeal stage, the Claimant does not have to prove his case but must establish that his appeal has a reasonable chance of success. In other words, he has to 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 says that he contacted human resources during his extended leave. He argues that his employer and Service Canada made several mistakes about dates and facts. The Claimant argues that he was never notified of the employer's refusal.

[13] The employer indicated that the Claimant quit his job. But, the General Division found that the Claimant lost his job because of misconduct.

[14] The Federal Court of Appeal says that it does not matter whether the employer or employee took the initiative to end the employment relationship when the employment was terminated as a result of a reprehensible act that is the real cause of the termination.¹

[15] The undisputed evidence before the General Division shows that the employer never gave the Claimant permission to take additional days off work. The Claimant confirmed this several times in interviews with the Commission.² He insisted on taking additional days off at his expense. The Claimant made a decision that was conscious, deliberate, and intentional. He knew or should have known that there would be consequences for his act because he was familiar with the collective agreement. Being absent without permission caused him to lose his job.

[16] As the General Division noted, this act amounts to misconduct under the *Employment Insurance Act*.³

[17] 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 errors the Claimant raised do not change the fact that he took a leave of absence without permission from his employer. The Claimant has not raised any issue that could justify setting aside the decision under review.

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

Pierre Lafontaine
Member, Appeal Division

¹ *Canada (Attorney General) v Desson*, 2004 FCA 303.

² See GD3-16 and GD3-28.

³ *Jamieson v Canada (Attorney General)*, 2011 FCA 204.