



Citation: *JC v Canada Employment Insurance Commission*, 2023 SST 203

**Social Security Tribunal of Canada
Appeal Division**

Leave to Appeal Decision

Applicant: J. C.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated July 17, 2023
(GE-23-591)

Tribunal member: Janet Lew

Decision date: September 21, 2023

File number: AD-23-759

Decision

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

Overview

[2] The Applicant, J. C. (Claimant), is seeking leave (permission) to appeal the General Division decision. The General Division dismissed his appeal.

[3] The General Division found that the Respondent, the Canada Employment Insurance Commission (Commission) proved that the Claimant had been suspended from his job because of misconduct. In other words, it found that he had done something that caused him to be suspended. The General Division found that the Claimant had not complied with his employer's vaccination policy.

[4] As a result of his misconduct, the Claimant was disentitled from receiving Employment Insurance benefits.

[5] The Claimant denies any misconduct. He says that his employer never gave him any options (such as testing or social distancing) that would have let him continue working. The Claimant says he has a learning disability. He says his employer should have accommodated him.

[6] Before the Claimant can move ahead with his appeal, I have to decide whether the appeal has a reasonable chance of success. In other words, there has to be an arguable case.¹ If the appeal does not have a reasonable chance of success, this ends the matter.²

[7] I am not satisfied that the appeal has a reasonable chance of success. Therefore, I am not giving permission to the Claimant to move ahead with his appeal.

¹ *Fancy v Canada (Attorney General)*, 2010 FCA 63.

² Under section 58(2) of the *Department of Employment and Social Development (DESD) Act*, I am required to refuse permission if I am satisfied "that the appeal has no reasonable chance of success."

Issue

[8] Is there an arguable case that the General Division made a mistake about any of the facts?

I am not giving the Claimant permission to appeal

[9] The Appeal Division must grant permission to appeal unless the appeal has no reasonable chance of success. A reasonable chance of success exists if the General Division arguably made a jurisdictional, procedural, legal, or certain type of factual error.³

[10] For factual errors, the General Division had to have based its decision on an error that it made in a perverse or capricious manner, or without regard for the evidence before it.

[11] The Claimant denies that there was any misconduct. Because of his learning disability, he says his employer should have accommodated or given him options. That way, he could have continued working.

[12] I am not satisfied that the Claimant has raised an arguable case. The issue about whether the Claimant's employer should have accommodated or given him options is irrelevant to the misconduct question.

[13] As the Federal Court of Appeal ruled in a case called *Mishibinijima*,⁴ whether an employee should have received an accommodation is an irrelevant consideration. The role of the General Division, when considering misconduct under the *Employment Insurance Act*, is limited to determining whether a claimant intentionally committed an act (or failed to commit an act), contrary to their employment obligations.⁵

³ See section 58(1) of the DESD Act.

⁴ *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36 at para 17.

⁵ *Cecchetto v Canada (Attorney General)*, 2023 FC 120 and *Kuk v Canada (Attorney General)*, 2023 FC 1134.

[14] This is not to suggest that the Claimant is without his options, but any recourse he may have against his employer for failing to accommodate him lies elsewhere.

Conclusion

[15] I am not satisfied that the appeal has a reasonable chance of success. Permission to appeal is refused. This means that the appeal will not be going ahead.

Janet Lew
Member, Appeal Division