



Citation: *ED v Canada Employment Insurance Commission*, 2023 SST 246

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: E. D.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated July 27, 2023
(GE-22-3604)

Tribunal member: Janet Lew

Decision date: September 21, 2023

File number: AD-23-788

Decision

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

Overview

[2] The Applicant, E. D. (Claimant), is seeking leave (permission) to appeal the General Division decision. The General Division dismissed the Claimant's appeal. It found that he had been suspended from his job because of misconduct. He had not complied with his employer's vaccination policy.

[3] As a result of the misconduct, the Claimant was disentitled from receiving Employment Insurance benefits during the suspension, from January 29, 2022, to July 27, 2022.

[4] The Claimant argues that the General Division made mistakes. He argues that the General Division failed to consider that the *Canadian Charter of Rights and Freedoms* guarantees everyone, "the right to pursue the gaining of a livelihood in any province."¹ He argues that because of the protections afforded under the *Charter*, his employer did not have any right to suspend him for failing to comply with its vaccination policy. So, he says that there was no misconduct.

[5] Further, the Claimant argues that misconduct did not arise when he refused to take a vaccine. He says the vaccines are ineffective and cause injury and possible death. The Claimant denies that he did anything wrong.

[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.² If the appeal does not have a reasonable chance of success, this ends the matter.³

¹ Claimant's Application to the Appeal Division - Employment Insurance, at AD 1-3.

² *Fancy v Canada (Attorney General)*, 2010 FCA 63.

³ 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."

[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.

Issue

[8] Is there an arguable case that the General Division made any jurisdictional, procedural, legal, or factual mistakes?

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 a certain type of factual error.⁴

[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] I am not satisfied that the appeal has a reasonable chance of success. The Claimant's arguments about (1) the *Charter* and (2) the effectiveness and safety of the vaccine were irrelevant considerations for the General Division.⁵

[12] Besides, there is no legal basis or precedent for the Claimant's assertions that the *Charter* prohibits an employer from ever suspending an employee because doing so would deprive them of their livelihood.

[13] Essentially, the Claimant is arguing that his employer's vaccination policy was unreasonable. But, as the Federal Court has now established, when it comes to considering misconduct under the *Employment Insurance Act*, the focus for the General

⁴ See section 58(1) of the DESD Act.

⁵ See *Milovac v Canada (Attorney General)*, 2023 FC 1120.

Division and the Appeal Division is on whether a claimant intentionally committed an act (or failed to commit an act) contrary to their employment obligations.⁶

[14] The Claimant's concerns were similar to those raised in another case called *Cecchetto v Canada (Attorney General)*, 2023 FC 102. There, the Federal Court acknowledged what Mr. Cecchetto saw were the fundamental legal or factual issues at the Appeal Division. This included the safety and efficacy of the COVID-19 vaccines. As the Federal Court wrote in that case, "The key problem with [Mr. Cecchetto's] argument is that he is criticizing decision-makers for failing to deal with a set of questions they are not, by law, permitted to address."⁷

[15] It was beyond the scope of the General Division's authority to consider the issues that the Claimant raised.

Conclusion

[16] 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

⁶ See, for instance, *Kuk v Canada (Attorney General)*, 2023 FC 1134.

⁷ *Cecchetto v Canada (Attorney General)*, 2023 FC 102 at para 32.