



Citation: *HN v Canada Employment Insurance Commission*, 2023 SST 388

**Social Security Tribunal of Canada  
Appeal Division**

**Leave to Appeal Decision**

**Applicant:** H. N.

**Respondent:** Canada Employment Insurance Commission

---

**Decision under appeal:** General Division decision dated July 17, 2023  
(GE-23-751)

---

**Tribunal member:** Janet Lew

**Decision date:** September 25, 2023

**File number:** AD-23-741

## Decision

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

## Overview

[2] The Applicant, H. N. (Claimant), is seeking leave (permission) to appeal the General Division decision. The General Division dismissed the Claimant's appeal.

[3] The General Division found that the Respondent, the Canada Employment Insurance Commission, had proven that the Claimant lost his employment because of misconduct. In other words, he had done something that caused him to be dismissed. The General Division found that he had not complied with his employer's vaccination policy. As a result of the misconduct, the Claimant was disqualified from receiving Employment Insurance benefits.

[4] The Claimant argues that the General Division made jurisdictional, procedural, and legal errors. He denies that he was engaged in any misconduct. He argues that misconduct did not arise because his employer's vaccination policy was unconstitutional and illegal. He notes that the General Division member declined to decide the legality of his employer's policy. He claims that the member had the jurisdiction, but simply lacked appropriate training to decide these matters. He is asking for a legally trained Tribunal.<sup>1</sup>

[5] 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.<sup>2</sup> If the appeal does not have a reasonable chance of success, this ends the matter.<sup>3</sup>

[6] 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.

---

<sup>1</sup> Claimant's Application to the Appeal Division-Employment Insurance, filed September 17, 2023, at AD 1B-3.

<sup>2</sup> *Fancy v Canada (Attorney General)*, 2010 FCA 63.

<sup>3</sup> Under section 58 of the *Department of Employment and Social Development Act* (DESD Act), I am required to refuse permission if I am satisfied, "that the appeal has no reasonable chance of success."

## Issue

[7] Is there an arguable case that the General Division made any jurisdictional, procedural, or legal errors?

### **I am not giving the Claimant permission to appeal**

[8] 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 may have made a jurisdictional, procedural, legal, or a certain type of factual error.<sup>4</sup>

[9] The Claimant argues that the General Division should have considered the constitutionality and legality of his employer's vaccination policy. He claims that, if it had done so, it would have determined that the policy was unconstitutional and illegal. And, on that basis, he says it would have then determined that he had not engaged in any misconduct. He denies that misconduct arose because he should not be expected to comply with an illegal or unconstitutional policy.

[10] The General Division determined that it did not have the authority to consider whether the employer's actions violated the Claimant's fundamental rights under the *Canadian Charter of Rights and Freedoms*.

[11] The General Division was simply following established case law that defines its scope of authority. In a case called *Cecchetto*, which the General Division referred to, the Federal Court ruled that neither the General Division nor the Appeal Division has the mandate or jurisdiction to assess or rule on the merits, legitimacy, or legality of a vaccination policy.<sup>5</sup>

[12] The Court has made it clear that the role of the General Division and Appeal Division is very narrow and specific. It is limited to focussing on whether a claimant intentionally committed an act (or failed to commit an act) contrary to their employment obligations.<sup>6</sup> The

---

<sup>4</sup> See section 58 (1) of the DESD Act..

<sup>5</sup> *Cecchetto v Canada (Attorney General)*, 2023 FC 120 at para 48.

<sup>6</sup> See also *Kuk v Canada (Attorney General)*, 2023 FC 1134.

role does not involve examining the legality or constitutionality of their employment obligations.

[13] As for the Claimant's rights, the Federal Court determined in *Cecchetto* and in another case, *Kuk*, that these were irrelevant considerations to the misconduct issue. In *Cecchetto*, the Federal Court wrote:

While [Mr. Cecchetto] is clearly frustrated that none of the decision-makers have addressed what he sees as the fundamental legal or factual issues that he raises—for example regarding bodily integrity, consent to medical testing, the safety and efficacy of the COVID-19 vaccines or antigen tests—that does not make the decision of the Appeal Division unreasonable. 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.<sup>7</sup>

[14] And, in another case, called *Milovac*,<sup>8</sup> the Federal Court confirmed that *Charter* concerns, as they relate to vaccination policies, are not matters to be decided by the General Division or the Appeal Division.

[15] This is not to suggest that the Claimant is without any options to pursue any remedies that he might have for any violation of his rights. However, they lie outside the Social Security Tribunal.

## Conclusion

[16] The Claimant does not have an arguable case that the General Division made jurisdictional, procedural, and legal errors. Permission to appeal is refused. This means that the appeal will not be going ahead.

Janet Lew  
Member, Appeal Division

---

<sup>7</sup> *Cecchetto*, at para 32.

<sup>8</sup> *Milovac v Canada (Attorney General)*, 2023 FC 1120.