



Citation: *BU v Canada Employment Insurance Commission*, 2023 SST 1401

**Social Security Tribunal of Canada**  
**Appeal Division**

**Leave to Appeal Decision**

**Applicant:** B. U.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated September 18, 2023  
(GE-23-1182)

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**Tribunal member:** Janet Lew

**Decision date:** October 24, 2023

**File number:** AD-23-883

## Decision

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

## Overview

[2] The Applicant, B. U. (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 Claimant did not show that he had good cause for leaving his job. The General Division found that he had reasonable alternatives to leaving his job. As a result, the Claimant did not get Employment Insurance benefits.

[4] The Claimant argues that he did not get a fair hearing before the General Division. He claims that the General Division member was neither independent nor impartial and that she was biased against him.

[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>1</sup> If the appeal does not have a reasonable chance of success, this ends the matter.<sup>2</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.

## Issue

[7] Is there an arguable case that the General Division member did not give the Claimant a fair hearing?

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<sup>1</sup> *Fancy v Canada (Attorney General)*, 2010 FCA 63.

<sup>2</sup> 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."

## **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>3</sup>

## **Is there an arguable case that the General Division member did not give the Claimant a fair hearing?**

[9] The Claimant argues that he did not get a fair hearing. He says the General Division member was biased because she had presided over another case of his. She dismissed his appeal in that case.<sup>4</sup> He suggests that she had already decided the outcome long ago, when she heard his first appeal.

[10] The Claimant's earlier appeal also involved the issue about whether the Claimant had just cause for leaving his employment. However, the Claimant's first appeal at the General Division involved a different set of facts. So, the member could not have simply adopted the facts and her decision from that case and applied them to the Claimant's second appeal.

[11] The Claimant says that the General Division member violated the Code of Conduct for Social Security Tribunal members as she failed to disqualify herself from hearing the appeal. He suggests that, as the member dismissed his earlier (although unrelated) appeal, she was in a conflict of interest and should not have heard his case.

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<sup>3</sup> See section 58(1) of the DESD Act.

<sup>4</sup> See *B.U. v Canada Employment Insurance Commission*, 2019 SST 1489. The General Division member decided the first case on October 18, 2019. She dismissed his first appeal. B.U. appealed to the Appeal Division, which found that the General Division had failed to consider whether the Claimant's job duties had significantly changed. The Appeal Division accepted that there was a significant change in the Claimant's work duties. But it also found that the Claimant had reasonable alternatives to leaving. Ultimately, it dismissed his appeal. See also *B.U. v Canada Employment Insurance Commission*, 2020 SST 16. The member heard the Claimant's second case about four years later, on September 12, 2023.

[12] The Claimant writes:

[The member] acknowledged that she recognized me from the Hearing that took place not so long ago. We had extremely bad relationship that she would express it in her most recent decision.

You could cut the atmosphere with a knife, that is how you describe the Hearing on September 12. I arrived on time, a half an hour before the Hearing and I reported myself to the front desk of Service Canada. However, the front desk staff told me that the SST is supposed to report themselves and nobody from the SST reported it yet. The front desk told me to be seated and wait if the SST would show up. Later, [the member] approached me and asked me to the Hearing room. When I asked the front desk what happened, they told me that this [member] behaved very weird and did not follow the protocol.

Let me tell you that I recognized [the member] but she looked different from our Hearing a couple years ago. That time she looked calm and normal. This time she looked like she was just taken out of a hospital bed. Her appearance made me very uncomfortable. She was not in a good mental state, very tense, her face was red and her eyes were full of Hate.

[13] The Claimant says that the member was in a conflict of interest. Under the *Conflict of Interest Act*, a public office holder is in a conflict of interest when they exercise an official power, duty or function that provides an opportunity to further their private interests or those of their relatives or friends or to improperly further another person's private interests.<sup>5</sup>

[14] However, the Claimant has not identified how the General Division member was in a conflict of interest. It is not enough that the member presided over an earlier appeal for a conflict of interest to arise.

[15] The Supreme Court of Canada set out the test for a reasonable apprehension of bias. It referred to Grandpré J.'s dissenting opinion in *Committee for Justice and Liberty v National Energy Board*:

[T]hat test is "what would an informed person, viewing the matter realistically and practically—and having thought the matter through—conclude. Would he think

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<sup>5</sup> See section 4 of the *Conflict of Interest Act*.

that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly.”<sup>6</sup>

[16] Merely alleging bias nor setting out one’s perceptions of the General Division member does not reach this standard.

[17] The fact that the same General Division member heard the Claimant’s second appeal does not necessarily show that there was bias, nor that she let the outcome of the Claimant’s first appeal somehow colour her views in the second appeal. There has to be something more to show that there was bias, other than to say that it was the same member who presided over both of his appeals.

[18] The Claimant described what he observed about the General Division member. He says that it was evident to him that the member was unwell. He says that she acted out of character and did not exhibit behaviour that one can expect from a member.

[19] It is unusual, if not unsettling, to hear that a member behaved “very weird,” that she looked as if she had “just [been] taken out of a hospital bed,” that she “was not in a good mental state,” and that her eyes “were full of Hate.” But, without any specifics of the member’s actual behaviour and conduct, one cannot give much credence to these allegations.

[20] I do not see any sign or evidence to support the claims regarding the General Division member. The audio recording of the General Division hearing does not suggest anything inappropriate or untoward about the member’s conduct.

[21] The Claimant did not point to anything in the audio recording of the General Division hearing that could have supported his allegations. Nothing in the audio recording suggests that the member was unwell or that she had any mental health issues that could have impacted her impartiality and her ability to provide a fair hearing.

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<sup>6</sup> See *Committee for Justice and Liberty et al. v National Energy Board et al*, 1976 CanLII 2 (SCC), [1978] 1 SCR 369.

[22] The audio recording of the General Division hearing reveals that the member explained in her opening remarks what the Claimant could expect at the hearing. She emphasized the General Division's independence and impartiality.

[23] The member outlined the format that the hearing would take. The member outlined the case that the Claimant had to prove. She reviewed the documents and facts. She identified the issues and the legal test that the Claimant had to meet.

[24] Throughout the hearing, the member was respectful towards the Claimant. She treated the Claimant in a fair and even-handed manner. She asked appropriate questions of the Claimant. For instance, she asked the Claimant whether he looked for another job before he quit. She also asked him whether he had attempted to contact his employer to resolve his concerns.<sup>7</sup>

[25] In her decision, the General Division member reviewed the evidence before her. This included the documentary evidence in the hearing file. This also included the Claimant's oral evidence. The General Division member considered the Claimant's evidence and arguments. The member weighed the evidence and applied the law to those facts that she considered relevant.

[26] The General Division member explained her reasons. She set out the issues and the factors that she had to assess. She identified the facts upon which she relied. The member's analysis was detailed and considered.

[27] Based on the General Division decision and the audio recording of the General Division hearing, I am unconvinced that the Claimant did not get a fair hearing or that the member was biased against him in any way.

[28] If, as the Claimant says, there was a "bad relationship" between the Claimant and the General Division member, the Claimant should have raised his concerns at the time. He should have objected and asked the member to recuse herself from hearing

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<sup>7</sup> The Claimant asked the General Division member whether she had learned anything new about his case from his earlier hearing. The member did not explicitly address the Claimant's questions, but it was irrelevant because the two appeals involved a different set of facts altogether.

the appeal. The member could have then considered the issue. But the Claimant did not object. He did not ask the member to recuse herself from hearing the case. The Claimant should have raised his objections at the first opportunity.

## **Conclusion**

[29] I am not satisfied that the appeal has a reasonable chance on the claim that the General Division member was biased or that the Claimant did not get a fair hearing. of success

[30] Permission to appeal is refused. This means that the appeal will not be going ahead.

Janet Lew  
Member, Appeal Division