



Citation: *SN v Canada Employment Insurance Commission*, 2023 SST 1426

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: S. N.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated June 12, 2023
(GE-22-3600)

Tribunal member: Solange Losier

Decision date: October 30, 2023

File number: AD-23-690

Decision

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

Overview

[2] S. N. is the Claimant in this case. He worked as a nurse. When he stopped working, he applied for Employment Insurance (EI) regular benefits.

[3] The Canada Employment Insurance Commission (Commission) decided that he could not get EI regular benefits because he was dismissed from his job due to misconduct.¹

[4] The General Division came to the same conclusion.² It decided that the Claimant did not adequately document client care over a six-day period and that amounted to misconduct, resulting in his dismissal. This meant that he was not entitled to get EI regular benefits.³

[5] The Claimant is now asking for permission to appeal the General Division decision to the Appeal Division.⁴ He argues that the General Division didn't follow procedural fairness because there was no act of negligence that resulted in his dismissal.⁵

[6] I am denying the Claimant's request for permission to appeal because it has no reasonable chance of success.⁶

Issue

[7] Is there an arguable case that the General Division didn't follow procedural fairness?

¹ See Commission's initial decision at page GD3-31 and reconsideration decision at page GD3-48.

² See General Division decision at pages AD1A-1 to AD1A-9.

³ See section 30(1) of the *Employment Insurance Act* (EI Act).

⁴ See application to the Appeal Division at pages AD1-1 to AD1-10; AD1B-1 to AD1B-6 and AD1C-1.

⁵ See page AD1B-3.

⁶ See section 58(2) of the *Department of Employment and Social Development* (DESD Act).

Analysis

[8] An appeal can proceed only if the Appeal Division gives permission to appeal.⁷

[9] I must be satisfied that the appeal has a reasonable chance of success.⁸ This means that there must be some arguable ground upon which the appeal might succeed.⁹

[10] The possible “grounds of appeal” to the Appeal Division are that the General Division:¹⁰

- proceeded in a way that was unfair;
- acted beyond its powers or refused to exercise those powers;
- made an error of law;
- based its decision on an important error of fact.

I am not giving the Claimant permission to appeal

[11] In the Claimant’s application to the Appeal Division, he says that the General Division didn’t follow procedural fairness.¹¹ Specifically, he argues that there was no act of negligence that resulted in his dismissal.

[12] If the General Division didn’t follow a fair process then I can intervene.¹²

– It is not arguable that the General Division didn’t follow procedural fairness

[13] The Claimant’s argument to the Appeal Division points to a disagreement with the outcome. He appears to disagree with the General Division’s finding that his conduct resulted in his dismissal.

⁷ See section 56(1) of the DESD Act.

⁸ See section 58(2) of the DESD Act

⁹ See *Osaj v Canada (Attorney General)*, 2016 FC 115.

¹⁰ See section 58(1) of the DESD Act.

¹¹ See page AD1B-3.

¹² See section 58(1)(a) of the DESD Act.

[14] The General Division dismissed the Claimant's appeal and decided that the Claimant was disqualified from receiving EI regular benefits for the following reasons:¹³

- The Claimant was dismissed from his job as a nurse because he did not document client information over a six-day period from December 29, 2021 to January 3, 2022.¹⁴
- It found that documenting client information was a requirement of his job and was one of the reasons he was dismissed.¹⁵ It relied on a termination letter issued by his employer.¹⁶
- It said that the Claimant admitted the conduct, specifically that he was lagging behind in documenting client care.¹⁷ This was also consistent with his testimony at the General Division hearing.¹⁸
- It decided that the Claimant knew this omission violated the employer's policy and could jeopardize his employment.¹⁹ This was also consistent with his testimony at the General Division hearing.²⁰
- It agreed that the Claimant was not told he was barred from the clinic of all purposes, so this particular conduct was not misconduct.²¹

[15] I listened to the audio recording from the General Division hearing, reviewed the General Division decision and file. I see no evidence of any procedural unfairness.

[16] The file shows that the Claimant got notice of the hearing. He asked to reschedule the hearing date twice because he was unavailable and his request was

¹³ See General Division decision at pages AD1A-1 to AD1A-9 and section 30(1) of the EI Act.

¹⁴ See paragraphs 18, 22 and 30 of the General Division decision.

¹⁵ See paragraph 18 of the General Division decision and hearing recording at 53:00 to 53:33.

¹⁶ See termination letter at pages GD3-35 to GD3-38.

¹⁷ See paragraph 19 of the General Division decision.

¹⁸ See hearing recording at 44:53.

¹⁹ See paragraph 33 of the General Division.

²⁰ and hearing recording at 53:08.

²¹ See paragraphs 14 and 17 of the General Division decision.

granted.²² The Claimant asked for a videoconference hearing and the hearing was held by videoconference.

[17] The hearing recording shows that the General Division gave the Claimant options on how he wanted to present his case. When the Claimant said that he prepared a written statement he wanted to read at the hearing, the General Division allowed him to read it.²³

[18] The hearing recording also shows that the General Division listened to the Claimant and asked relevant and clarifying questions throughout the hearing.

[19] While the Claimant might disagree with the General Division's findings and conclusion, it doesn't mean it was procedurally unfair.

[20] An appeal to the Appeal Division of the Tribunal is not a new hearing. I cannot reweigh the evidence in order to get a different conclusion that is more favourable for the Claimant.²⁴

[21] So, it is not arguable that the General Division didn't follow procedural fairness. There is no reasonable chance of success on this ground.

– There are no other reasons for giving the Claimant permission to appeal

[22] As noted above, I listened to the General Division recording, reviewed the General Division decision and file to see if there were any other types of errors.²⁵ However, I did not find any relevant evidence that the General Division might have ignored or misinterpreted. As well, the General Division applied the relevant section in law and applicable case law.

²² See pages GD1-1 to GD1-3; GD6-1; GD7-1 to GD7-3; GD8-1; GD9-1 to GD9-3 and GD10-1 to GD10-3.

²³ See hearing recording at 9:35.

²⁴ See *Garvey v Canada (Attorney General)*, 2018 FCA 118.

²⁵ See section 58(1) of the DESD Act.

Conclusion

[23] Permission to appeal is refused. This means that the appeal will not proceed.

Solange Losier
Member, Appeal Division