



Citation: *MZ v Canada Employment Insurance Commission*, 2023 SST 1472

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

**Leave to Appeal Decision**

**Applicant:** M. Z.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated August 3, 2023  
(GE-23-1227)

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**Tribunal member:** Pierre Lafontaine

**Decision date:** November 8, 2023

**File number:** AD-23-784

## Decision

[1] Leave to appeal is refused. This means the appeal will not proceed.

## Overview

[2] The Applicant (Claimant) lost her job at a hospital (employer). Her employer said she abandoned her job. She didn't give it medical documentation to support her absences, which she says were for health reasons.

[3] The Respondent (Commission) decided the Claimant voluntarily left (quit) her job without just cause. So, the Commission didn't pay her EI benefits. After an unsuccessful reconsideration, the Claimant appealed to the General Division.

[4] The General Division found that the Claimant did not quit her job but was instead dismissed from her job because she did not justify her absences with medical documentation. It found that the Claimant knew that refusing to supply the requested documentation could lead to her dismissal. The General Division found that it was the reason for her dismissal. It concluded that the Claimant lost her job because of misconduct.

[5] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. In support of her application for permission to appeal, the Claimant submits that the General Division changed her *Record of Employment* (ROE) to misconduct. She disagrees with the start date and insurable hours mentioned on her ROE. The Claimant submits that applying for maternity leave and submitting forms to her employer was not mentioned in her ROE.

[6] I must decide whether there is some reviewable error of the General Division upon which the appeal might succeed.

[7] I am refusing leave to appeal because the Claimant's appeal has no reasonable chance of success.

## Issue

[8] Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?

## Preliminary matters

[9] It is well established that the Appeal Division must consider the evidence presented to the General Division to decide the present leave to appeal application.<sup>1</sup> An appeal to the Appeal Division is not a new hearing where a party can re-present evidence to obtain a different outcome than that before the General Division.

## Analysis

[10] Section 58(1) of the *Department of Employment and Social Development Act* specifies the only grounds of appeal of a General Division decision. These reviewable errors are that:

1. The General Division hearing process was not fair in some way.
2. The General Division did not decide an issue that it should have decided. Or, it decided something it did not have the power to decide.
3. The General Division based its decision on an important error of fact.
4. The General Division made an error of law when making its decision.

[11] An application for leave to appeal is a preliminary step to a hearing on the merits. The Claimant must meet this initial hurdle, but it is lower than the one of the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove her case but must establish that the appeal has a reasonable chance of success based on a reviewable error.

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<sup>1</sup> *Sibbald v Canada (Attorney General)*, 2022 FCA 157.

[12] In other words, I need to be satisfied that the reasons for appeal fall within any of the above-mentioned grounds of appeal and that at least one of the reasons has a reasonable chance of success in appeal, in order to grant leave.

**Does the Claimant raise some reviewable error of the General Division upon which the appeal might succeed?**

[13] The Claimant submits that the General Division changed her ROE to misconduct. She disagrees with the start date and insurable hours mentioned on her ROE. The Claimant submits that applying for maternity leave and submitting forms to her employer was not mentioned in her ROE.

[14] The General Division is not bound by the reasons given by the employer or a claimant to justify the separation from employment. It is up to the General Division to verify and interpret the facts of the present case and make its own assessment on the issue before it.

[15] As stated by the General Division, voluntary leaving and misconduct are dealt with in the same section of the law. So, it can apply either one when deciding whether a claimant can get EI benefits.<sup>2</sup>

[16] The General Division noted that the Commission and the Claimant agreed that her employer dismissed her. It did not accept the employer's evidence that the Claimant had quit her job.

[17] Therefore, the General Division had to decide whether the Claimant lost her job because of misconduct.

[18] The notion of misconduct does not imply that it is necessary that the breach of conduct be the result of wrongful intent; it is sufficient that the misconduct be conscious, deliberate, or intentional. In other words, in order to constitute misconduct, the act complained of must have been wilful or at least of such a careless or negligent nature

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<sup>2</sup> See *Canada (Attorney General) v Easson*, A-1598-92 (FCA), and *Canada (Attorney General) v Desson*, 2004 FCA 303.

that one could say the employee wilfully disregarded the effects their actions would have on their performance.

[19] The General Division's role is not to judge the severity of the employer's penalty or to determine whether the employer was guilty of misconduct by dismissing the Claimant in such a way that her dismissal was unjustified, but rather of deciding whether the Claimant was guilty of misconduct and whether this misconduct led to her dismissal.

[20] The Claimant's last day of work was in mid-November 2021. Her employer dismissed her effective June 15, 2022. She didn't go to work between those two dates and did not give the employer a medical note to support her absences.

[21] The General Division found that the Claimant was dismissed because she did not justify her absences with medical documentation. It noted that the employer had given her many opportunities to comply and that she knew that not providing the information to her employer would have consequences on her job. It found that the Claimant lost her job for that reason. The General Division concluded that the Claimant lost her job because of misconduct.

[22] At the hearing, the Claimant tried to justify the absence of a medical note on the fact that she couldn't go to the doctor to get a note because she had nausea, vomiting, diarrhea, and couldn't get out of bed. However, the General Division noted that the Claimant had gone to see a doctor one month after the employer dismissed her. The note says nothing about fitness to work or return to work. It doesn't explain why the Claimant did not go to work from November 2021 to June 2022.

[23] I see no reviewable error made by the General Division when it determined, based on the evidence brought to its attention, that the Claimant's employment had been terminated because she missed work without obtaining permission from her employer. There is no doubt that doing so constitutes misconduct.

[24] The Claimant's argues that her ROE is incorrect. It contains errors related to the start date and her insurable hours.

[25] Even if this is correct, the law says that if a claimant who has lost an employment because of misconduct makes a claim for benefits, the hours of insurable employment from that or any other employment before the employment was lost may not be used to qualify to receive regular EI benefits.<sup>3</sup> It must be noted that the Claimant had already received her full entitlement to sickness benefits for this benefit period.

[26] After reviewing the appeal file, the General Division decision, and the Claimant's arguments, I find that the General Division considered the evidence before it and properly applied the law in deciding that the Claimant had lost her job because of misconduct. I have no choice but to find that the appeal has no reasonable chance of success.

## **Conclusion**

[27] Leave to appeal is refused. This means the appeal will not proceed.

Pierre Lafontaine  
Member, Appeal Division

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<sup>3</sup> See section 30 of the *Employment Insurance Act*.