



Citation: *EA v Canada Employment Insurance Commission*, 2023 SST 1660

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: E. A.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated September 11, 2023
(GE-23-1840)

Tribunal member: Pierre Lafontaine

Decision date: November 22, 2023

File number: AD-23-846

Decision

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

Overview

[2] The Applicant (Claimant) lost her job in a childcare center. Her employer says she lost her job because she did not provide them with a copy of her childcare certificate.

[3] The Respondent (Commission) decided the Claimant lost her job because of misconduct. 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 lost her job because she didn't give the employer a copy of her childcare licensing certificate. It found that she knew she would lose her job if she did not provide the requested certificate. 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 she disagrees with the General Division decision and wants to apply again.

[6] A letter was sent to the Claimant requesting that she provide her detailed grounds of appeal. Attempts were made to contact her by phone without success. The Claimant did not provide the requested information within the allowed time.

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

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

Issue

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

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.

[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 she disagrees with the General Division decision and wants to apply again. She did not provide her detailed grounds of appeal as requested by the Tribunal.

[14] The General Division had to decide whether the Claimant lost her job because of misconduct.

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

[16] 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.

[17] The General Division found that the Claimant lost her job because she didn't give the employer a copy of her childcare licensing certificate. It found that she knew she would lose her job if she did not provide the requested certificate. The General Division found that it was the reason for her dismissal. It concluded that the Claimant lost her job because of misconduct.

[18] The General Division found the employer to be more credible than the Claimant. It based this determination on the fact that, while the Claimant denied that the employer requested her certificate, a text message was sent to her by the employer on her last day of work requesting that she bring the document to work. She did not.

[19] 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 knowingly did not provide her childcare certificate.

[20] Unfortunately, for the Claimant, 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.

[21] 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 find no reason to intervene on the issue of credibility as assessed by the General Division.

[22] I have no choice but to find that the appeal has no reasonable chance of success.

Conclusion

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

Pierre Lafontaine
Member, Appeal Division