



Citation: *VR v Canada Employment Insurance Commission*, 2024 SST 15

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: V. R.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated September 18, 2023
(GE-23-1910)

Tribunal member: Pierre Lafontaine

Decision date: January 5, 2024

File number: AD-23-919

Decision

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

Overview

[2] The Applicant (Claimant) lost his job as a driver. The Claimant's employer said that he was let go because he sexually harassed the employee of a customer on his delivery route. The Claimant said that he never sexually harassed anyone. He argued that he was let go because he wanted to change routes and was asking for a raise.

[3] The Respondent (Commission) determined that the Claimant was dismissed because he sexually harassed the employee of a customer on his delivery route. It decided that the Claimant lost his job because of misconduct and disqualified him from receiving EI benefits. After an unsuccessful reconsideration, the Claimant appealed to the General Division.

[4] The General Division found that the Claimant lost his job because he was harassing a customer's employee. The General Division found that the Claimant knew or should have known that he could lose his job because he had received prior warnings. It found that this was the reason why he was let go. The General Division concluded that the Claimant lost his job because of misconduct.

[5] The Claimant now seeks leave to appeal of the General Division's decision to the Appeal Division. The Claimant was asked to provide his grounds of appeal before November 15, 2023. He did not do so. He was granted an extension of time to submit his grounds of appeal until December 5, 2023. To this date, the Claimant has not provided his grounds of appeal.

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

[7] I refuse 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?

Analysis

[9] 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.

[10] An application for leave to appeal is a preliminary step to a hearing on the merits. It is an initial hurdle for the Claimant to meet, but it is lower than the one that must be met on the hearing of the appeal on the merits. At the leave to appeal stage, the Claimant does not have to prove his case but must establish that the appeal has a reasonable chance of success based on a reviewable error. In other words, that there is arguably some reviewable error upon which the appeal might succeed.

[11] Therefore, before I can grant leave, 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.

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

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

[13] The General Division's role is to determine whether the employee's conduct amounted to misconduct within the meaning of the *Employment Insurance Act* and not whether the severity of the penalty imposed by the employer was justified or whether the employee's conduct was a valid ground for dismissal.

[14] The General Division must decide the issue before it based on the evidence presented by the parties.

[15] The General Division found that the Claimant lost his job because he was harassing a customer's employee on his delivery route. The General Division found that the Claimant knew or should have known that he could lose his job because he had received prior warnings. It found that this was the reason why he was let go. The General Division concluded that the Claimant lost his job because of misconduct.

[16] The General Division gave more weight to the employer's evidence. It considered that the Claimant was fired the day after the employer got a complaint about one of its drivers sexually harassing a customer's employee and was contacted by the police. It also considered that employer's evidence was supported by the timeline of events, the email from the customer, and the evidence of the employer's investigation of the complaint.

[17] The evidence shows that the Claimant knew that harassment was unacceptable. He had received prior warnings, including one not to harass customers. The evidence before the General Division supports its conclusion that the Claimant knew or should have known that his actions could lead to his dismissal.

[18] I see no reviewable error made by the General Division. It made its decision based on the evidence before it, and the decision complies with both the legislative provisions and the case law regarding misconduct.

[19] Unfortunately, for the Claimant, an appeal to the Appeal Division is not an appeal in which there is a new hearing where a party can re-present their evidence and hope for a favourable decision.

[20] After reviewing the appeal file and the General Division's decision as well as considering the Claimant's arguments in support of his request for leave to appeal, I have no choice but to find that the appeal has no reasonable chance of success. The Claimant has not set out a reason, which falls into the above-enumerated grounds of appeal that could possibly lead to the reversal of the disputed decision.

Conclusion

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

Pierre Lafontaine
Member, Appeal Division