



Citation: *SB v Canada Employment Insurance Commission*, 2024 SST 317

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

**Leave to Appeal Decision**

**Applicant:** S. B.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated December 6, 2023  
(GE-23-1579)

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**Tribunal member:** Melanie Petrunia

**Decision date:** March 26, 2024

**File number:** AD-24-31

## **Decision**

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

## **Overview**

[2] The Applicant, S. B. (Claimant) was dismissed from his job with a regional health facility. His employer said that he was dismissed because he did not comply with its COVID-19 vaccination policy.

[3] The Claimant applied for regular employment insurance (EI) benefits. The Respondent, the Canada Employment Insurance Commission (Commission) decided that the Claimant was terminated due to his own misconduct. The Claimant requested a reconsideration and the Commission maintained its decision.

[4] Claimant appealed the reconsideration decision to the Tribunal's General Division. The General Division dismissed the appeal. It found that the Claimant lost his job because of misconduct could not be paid EI benefits.

[5] The Claimant is now asking to appeal the General Division decision to the Tribunal's Appeal Division. However, he needs permission for his appeal to move forward. The Claimant argues the General Division made numerous errors in its decision.

[6] I have to decide whether there is some reviewable error of the General Division on which the appeal might succeed. I am refusing leave to appeal because the Claimant's appeal has no reasonable chance of success.

## **Issues**

[7] The issues are:

- a) Is there an arguable case that the General Division was biased?

- b) Is there an arguable case that the General Division violated procedural fairness by disregarding the testimony of the Claimant's witnesses?
- c) Is there an arguable case that the General Division made an error of law by relying on a decision of the Federal Court?
- d) Is there an arguable case that the General Division was biased by accepting certain evidence of the Commission?
- e) Is there an arguable case that the General Division made an error of law by distinguishing a decision that the Claimant relied on?
- f) Does the Claimant raise any other reviewable error of the General Division upon which the appeal might succeed?

## **I am not giving the Claimant permission to appeal**

[8] The legal test that the Claimant needs to meet on an application for leave to appeal is a low one: Is there any arguable ground on which the appeal might succeed?<sup>1</sup>

[9] To decide this question, I focused on whether the General Division could have made one or more of the relevant errors (or grounds of appeal) listed in the Department of Employment and Social Development Act (DESD Act).<sup>2</sup>

[10] An appeal is not a rehearing of the original claim. Instead, I must decide whether the General Division:

- a) failed to provide a fair process;
- b) failed to decide an issue that it should have, or decided an issue that it should not have;

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<sup>1</sup> This legal test is described in cases like *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12 and *Ingram v Canada (Attorney General)*, 2017 FC 259 at para 16.

<sup>2</sup> DESD Act, s 58(2).

c) based its decision on an important factual error;<sup>3</sup> or

d) made an error in law.<sup>4</sup>

[11] Before the Claimant can move on to the next stage of the appeal, I have to be satisfied that there is a reasonable chance of success based on one or more of these grounds of appeal. A reasonable chance of success means that the Claimant could argue his case and possibly win. I should also be aware of other possible grounds of appeal not precisely identified by the Claimant.<sup>5</sup>

– **Background**

[12] The Claimant's employer was subject to a Provincial Health Order (PHO) requiring workers at health facilities to be vaccinated against COVID-19. In his application for EI benefits, the Claimant said that he was terminated because his employer tried to coerce him to be vaccinated and would not answer his questions about the vaccine so he could not give informed consent.<sup>6</sup>

[13] The Commission decided that the reason that the Claimant lost his job was misconduct. The General Division dismissed the Claimant's appeal. It found that the Commission had proven that the Claimant was dismissed for misconduct.<sup>7</sup>

– **No arguable case that the General Division was biased**

[14] The Claimant argues that he raised numerous examples of bias and corruption at the Commission and the Tribunal. As an example, he says that he asked the Commission if they had a financial incentive to deny valid claims which was answered

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<sup>3</sup> The language of section 58(1)(c) actually says that the General Division will have erred if it bases its decision on a finding of fact that it makes in a perverse or capricious manner or without regard for the material before it. The Federal Court has defined perverse as "willfully going contrary to the evidence" and defined capricious as "marked or guided by caprice; given to changes of interest or attitude according to whim or fancies; not guided by steady judgment or intent" *Rahi v Canada (Minister of Citizenship and Immigration)* 2012 FC 319.

<sup>4</sup> This paraphrases the grounds of appeal.

<sup>5</sup> *Karadeolian v Canada (Attorney General)*, 2016 FC 615; *Joseph v Canada (Attorney General)*, 2017 FC 391.

<sup>6</sup> GD3-37

<sup>7</sup> General Division decision at para 52.

affirmatively. He argues that this points to rampant corruption and the General Division did not take his concerns regarding bias and corruption into consideration.<sup>8</sup>

[15] The threshold for a finding of bias is high, and the party making the allegation has the burden of proof. An allegation of bias cannot rest on suspicion, pure conjecture, insinuations, or mere impressions.<sup>9</sup> The Supreme Court of Canada has said that the test for bias is: “What would an informed person, viewing the matter realistically and practically and having thought the matter through conclude?”<sup>10</sup>

[16] The General Division directly addressed the Claimant’s concern about bias.<sup>11</sup> It acknowledged the Claimant’s concern about the Commission and specifically referenced his argument concerning the financial incentive to deny claims.<sup>12</sup> The General Division explained that these arguments are not within its jurisdiction to consider. It explained that he could pursue these concerns in other ways.<sup>13</sup>

[17] There is no arguable case that the General Division was biased against the Claimant or erred in any way by not taking into consideration his claims about bias and corruption at the Commission. The General Division considered the Claimant’s arguments and explained that the issue was outside its jurisdiction. The Claimant disagrees with the conclusions that the General Division reached, but this does not amount to bias.

[18] The Claimant also raised concerns about the General Division being biased when it accepted the Commission’s evidence that the Claimant was told he had to be vaccinated.<sup>14</sup> The General Division was referring to the Commission’s argument that the Claimant was advised by the wording of the PHO and the employer’s policy.<sup>15</sup> The

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<sup>8</sup> AD1-7

<sup>9</sup> See *Arthur v Canada (Attorney General)*, 2001 FCA 223.

<sup>10</sup> See *Committee for Justice and Liberty v National Energy Board*, 1976 CanLII 2 (SCC), [1978] 1 SCR 369.

<sup>11</sup> General Division decision at paras 24 to 26.

<sup>12</sup> General Division decision at para 24.

<sup>13</sup> General Division decision at para 25.

<sup>14</sup> AD1-7

<sup>15</sup> General Division decision at para 91.

General Division also explained, with reference to the evidence why it found that it was more likely than not that this was communicated to the Claimant.<sup>16</sup>

[19] The General Division considered the Claimant's evidence, as well as the Commission's. It weighed the evidence it heard and made a determination as it is required to do. I see no arguable case that the General Division was biased in its determination.

– **No arguable case that the General Division violated procedural fairness**

[20] The Claimant says that the General Division violated procedural fairness by rejecting the testimony of his first witness on the issue of whether his conduct was wilful. He says that the General Division should have asked for more detail if it wasn't satisfied and jeopardized his right to a fair hearing.<sup>17</sup>

[21] The General Division addressed the Claimant's witness' testimony. It found that the testimony lacked sufficient detail about when meetings took place and what conduct was being referred to.<sup>18</sup> The General Division explained why it did not accept the witness' testimony as evidence that the Claimant's action or inaction was not wilful and therefore not misconduct.<sup>19</sup>

[22] There is no arguable case that the General Division failed to follow procedural fairness. The Claimant's witnesses were able to testify and the General Division explained why it did not accept the testimony as evidence that the Claimant's actions weren't wilful.

[23] The Claimant also argues that the General Division erred by dismissing the testimony of his second witness.<sup>20</sup> The General Division explained that it was not considering this witness' testimony about the long-term safety data of the COVID-19 vaccine and the effects on informed consent. It referred to earlier paragraphs in its

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<sup>16</sup> General Division decision at para 79.

<sup>17</sup> AD1-7

<sup>18</sup> General Division decision at para 80.

<sup>19</sup> General Division decision at para 81.

<sup>20</sup> AD1-7

decision in which it explained that issues of safety and efficacy of the vaccine and right to informed consent are outside the Tribunal's jurisdiction.<sup>21</sup>

[24] There is no arguable case that the General Division failed to provide a fair process by not considering the second witness' testimony about the vaccine. It explained why the evidence provided by the witness on this topic was not relevant to the issues it had to decide.

– **No arguable case that the General Division made an error of law**

[25] The Claimant argues that the General Division should not have relied on a decision of the Federal Court, *Cecchetto v Canada (Attorney General)*.<sup>22</sup> He says that the case is fundamentally different from his and not relevant to his appeal. The Claimant also says that a Federal Court decision that he relied on, *Astolfi v Canada (Attorney General)*, is relevant and should not have been dismissed by the General Division.<sup>23</sup>

[26] The General Division referred to the *Cecchetto* decision, which concerned a COVID-19 vaccination policy and misconduct. It referred to this decision in support of its conclusion that it cannot make decisions about the safety or efficacy of the vaccine or informed consent.<sup>24</sup> I see no evidence that this binding decision would not be relevant in the Claimant's circumstances. There is no arguable case that the General Division erred by referencing this decision.

[27] The General Division also addressed the Claimant's arguments concerning the *Astolfi* decision. It explained how the facts in that case differ from the Claimant's and found that it was not applicable.<sup>25</sup> There is no arguable case that the General Division made an error of law by not applying that decision.

[28] The General Division applied the proper legal test and followed binding case law from the Federal Court and the Federal Court of Appeal. It considered the Claimant's

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<sup>21</sup> General Division decision at para 82 referencing para 47 to 55.

<sup>22</sup> *Cecchetto v Attorney General of Canada*, 2023 FC 102.

<sup>23</sup> *Astolfi v Canada (Attorney General)*, 2020 FC 30.

<sup>24</sup> General Division decision at paras 51 to 53.

<sup>25</sup> General Division decision at paras 95 to 97.

evidence and arguments and did not take into account any irrelevant evidence. There is no arguable case that the General Division made any reviewable errors in its decision.

[29] The Claimant has not identified any errors of the General Division upon which the appeal might succeed. As a result, I am refusing leave to appeal.

## **Conclusion**

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

Melanie Petrunia  
Member, Appeal Division