Citation: *FY v Canada Employment Insurance Commission*, 2024 SST 316

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	F. Y.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated November 9, 2023 (GE-23-2823)

Tribunal member:	Janet Lew
Decision date:	March 26, 2024
File number:	AD-23-1102

Decision

[1] Leave (permission) to appeal is refused. The appeal will not be going ahead.

Overview

[2] The Applicant, F. Y. (Claimant), is seeking leave to appeal the General Division decision. The General Division found that the Claimant was disqualified from receiving Employment Insurance benefits because he had voluntarily left his employment without just cause. The General Division found that the Claimant had reasonable alternatives to leaving his employment.

[3] The Claimant argues that the General Division made procedural and factual errors. In particular, he says that the member was biased against him. The Claimant also argues that the General Division failed to consider all the evidence before it. The Claimant also says that there was an unreasonable delay in his claim, which affected his ability to gather information for his case.

[4] The Claimant says that if the General Division had not been biased and if it had not made factual errors, he would have had the chance to fairly present his case, and the General Division would have accepted that he had just cause.

[5] Before the Claimant can move ahead with the appeal, I have to decide whether the appeal has a reasonable chance of success. In other words, there has to be an arguable case.[1] If the appeal does not have a reasonable chance of success, this ends the matter.[2]

[6] I am not satisfied that the appeal has a reasonable chance of success. Therefore, I am not giving permission to the Claimant to move ahead with the appeal.

---

[1] See *Fancy v Canada (Attorney General)*, 2010 FCA 63.
[2] Under section 58(2) of the *Department of Employment and Social Development* (DESD) *Act,* I am required to refuse permission if I am satisfied "that the appeal has no reasonable chance of success."

Issues

[7] The issues are as follows:

(a) Is there an arguable case that the General Division made procedural errors?

(b) Is there an arguable case that the General Division member caused an unreasonable delay?

(c) Is there an arguable case that the General Division member was biased or that there was a reasonable apprehension of bias?

(d) Is there an arguable case that the General Division made important factual errors?

I am not giving the Claimant permission to appeal

[8] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success. A reasonable chance of success exists if the General Division may have made a jurisdictional, procedural, legal, or a certain type of factual error.[3]

[9] For these types of factual error, the General Division had to have based its decision on an error that it made in a perverse or capricious manner, or without regard for the evidence before it.[4]

The Claimant does not have an arguable case that the General Division made procedural errors

[10] A procedural error involves the fairness of the process at the General Division. It is not concerned with whether a party feels that the decision is unjust. Parties before the General Division enjoy rights to certain procedural protections such as the right to be

[3] See section 58(1) of the DESD Act.
[4] See section 58(1)(c) of the DESD Act.

heard, to know the case against them, to timely receipt of notice of hearings, and the right to an unbiased decision-maker.

[11] The Claimant argues that the General Division member was biased or that there was a reasonable apprehension of bias. The Claimant feels that he did not get a fair hearing. He also argues that the member made several procedural errors, including the following, that she:

- generally failed to adhere to the *Social Security Tribunal Rules of Procedure*
- failed to arrive on time for the hearing – the hearing was scheduled to start at 11:30 a.m. The Notice of Hearing instructed him to arrive 30 minutes before the hearing start time. He arrived at 11:00 a.m. and noticed that the member arrived at 11:20 a.m.
- failed to record the hearing in its entirety – he says that the member should have kept the audio recording information intact and "she should not have restarted the audio recorder as she had intended."[5]
- failed to ensure a full documentary record – the Claimant filed arguments and evidence (GD8) the day before the General Division hearing on November 7, 2023. The Claimant says the member denied receiving this document even though he got confirmation that the Social Security Tribunal (Tribunal) had received the document on November 6, 2023. He also says the member refused to make a copy of his document.
- failed to listen, review, and consider all the evidence and facts before the hearing – for example, the member had to ask him the name of his supervisor, even though he says this was in the file. Two, he says that the member asked him to refine his arguments and present only the important arguments and evidence, "not all of the facts and evidence in the **GD08**"[6]

[5] See Claimant's Application to the Appeal Division, at AD 1–176.
[6] See Claimant's Application to the Appeal Division, at AD 1-176.

- failed to accept his document GD9.

– **The member did not arrive at the hearing 30 minutes before the hearing**

[12] The Claimant suggests that the General Division member breached the principles of natural justice because she did not arrive 30 minutes before the scheduled start time for the hearing. This suggests that the member was late and that he therefore did not get a fair chance to present his case.

[13] Members of the General Division (or Appeal Division for that matter) do not have to arrive 30 minutes before an in-person hearing. As a matter of professional courtesy, members typically arrive early to ensure they are ready to start at the scheduled time. Arrival times may vary among members. However, sometimes delays are unavoidable and outside their control. What is important is that the Claimant got a fair hearing.

[14] In this case, I do not see any indication that the hearing did not start on time or, if it was delayed, that that somehow affected the Claimant or the fairness of the hearing. I do not see any indication that the Claimant ever objected at the time or at anytime during the hearing that he was prejudiced or did not get a fair hearing because he felt the member should have arrived earlier than she did.

[15] The Notice of Hearing indicates that the hearing had been scheduled for 60 minutes. I see that the hearing ran for about 17½ minutes over the scheduled time. And, at about the one hour 13:35 minute mark of the hearing, the member asked the Claimant if there was anything else he had to say before she closed the hearing. He did not have anything further to say. On top of that, I see that the member also gave the Claimant a chance to file documents after the hearing. This suggests to me that the General Division member gave the Claimant a fair opportunity to present his case.

[16] I am not satisfied that the Claimant has an arguable case that the General Division made a procedural error by not arriving within 30 minutes before the scheduled start time for the hearing.

– **The member did not record all discussions with the Claimant**

[17] The Claimant argues that the General Division member breached the Tribunal`s Rules of Procedure because she did not record everything. The Rules of Procedure do not require hearings to be recorded, though members of both the General Division and the Appeal Division typically record hearings. However, sometimes there are equipment or technological failures that impede a member's ability to record.

[18] It seems that the Claimant is arguing that the General Division member should have recorded discussions that she had with him before the hearing about some of the documents. Ideally, members would refrain from any appeal-related discussions before a hearing, but sometimes claimants initiate discussions before members can react. I do not know if that was the case here. But there is no suggestion that the member said anything inappropriate or prejudicial to the Claimant.

[19] In this case, the member noted that the Claimant had informed her before the hearing that he had filed document GD8 with the Tribunal the day before.[7] If the Claimant had in any way objected or disagreed with the member's summary of what they discussed, he should have spoken up or objected at that point.

[20] The Claimant has not shown how an incomplete recording affected his procedural rights. I am not satisfied that there is an arguable case that the General Division breached the principles of natural justice by not recording everything, including discussions that took place before the hearing formally began.

– **The Claimant says the member did not have a copy of document GD8**

[21] The Claimant argues that the member breached the Tribunal`s Rules of Procedure because she did not have a copy of one of his documents (GD8) before the hearing started. He questions how she could not have received it in time for the hearing because he sent the document to the Tribunal the day before the hearing. At the very

[7] At approximately 5:00 of the audio recording of the General Division hearing on November 7, 2023.

least, he says that she should have made a copy of his document when he offered it to her, but he says that she refused.

[22] During the hearing, the member reviewed the documents on file. She also noted that the Claimant had informed her that he filed document GD8 with the Tribunal the day before.[8] Clearly, this conversation took place before the hearing formally started. She also stated that she now had a copy of the document, as he had given her a copy.

[23] As the Claimant gave the General Division member a copy of the document during the hearing, there is no arguable case that the member did not have a copy of the document with her during the hearing. Besides, even if the member did not have a copy of the document at the time, she was aware of it and could have accessed it after the hearing.

[24] The member also let the Claimant speak about the document. The member let the Claimant explain the document and summarize any evidence and arguments that he felt was vital to his case.

[25] For these reasons, I am not satisfied that there is an arguable case that the General Division breached the principles of natural justice.

– **The Claimant says the member did not review the file before the hearing**

[26] The Claimant suggests that the General Division member breached the principles of natural justice because she did not review the file before the hearing started. As evidence of this, he says that the member asked him the name of his supervisor and where that information could be found in the hearing file.

[27] The fact that the member asked the Claimant this question does not necessarily prove that she did not read all the documents before the hearing. As so often happens, a member will have read the file but simply forgotten some of the finer details, or where

[8] At approximately 5:00 of the audio recording of the General Division hearing on November 7, 2023.

those details can be found. The member may not have tabbed that part of the document either.

[28] The member had clearly reviewed the file before the hearing. She was familiar with the issues and the facts. She reviewed what she identified were the primary issues and facts. For instance, she noted that the dispute was whether the Claimant had voluntarily left his employment and whether he had good cause or reasonable alternatives to leaving. She identified when the Claimant's contract of employment came to an end. She was familiar with the nature of the Claimant's employment.[9] This shows that the member had read the file.

[29] Even if the member had not read any portion of or all the file materials before the hearing, that does not result in a breach of the principles of natural justice. What is important is that the member was familiar with all the material evidence and the parties' arguments when she ultimately made her decision. Hence, it is always good practice for parties to highlight any evidence they think is important to prove their case, especially when the hearing file is thick and spans several hundreds of pages (though that was not the case here).

[30] If the member overlooked any of the evidence, this is best addressed as a factual error, which I will discuss below.

– **The Claimant argues that the member would not let him go through all the facts and evidence in document GD8**

[31] The Claimant argues that the General Division member would not let him go through all the facts and evidence in GD8. In fact, the evidence does not support the Claimant's arguments on this point.

[32] The General Division member asked the Claimant, "Do you want to take me through anything else, maybe the documents that you've given me, your arguments and evidence? Are there other things you want to tell me about?"[10] He responded that if she

[9] At approximately 13:45 of the audio recording of the General Division hearing on November 7, 2023.
[10] At approximately 46:25 of the audio recording of the General Division hearing on November 7, 2023.

was going to read everything, that he would not have anything to say. The member replied that she would read what he had file, but as she might not understand what he was trying to say, invited him to take her through and highlight what he thought was important.[11] He responded that everything was important. The member replied that she would be reviewing everything.

[33] An important part of a member's role is to manage the hearing and ensure that parties have a fair chance to present their respective cases. This does not mean that parties should read all their documents and arguments, or that they should repeat themselves. It was unnecessary for the Claimant to read GD8 in its entirety as the member had access to the document and could review it after the hearing. The General Division member attempted to steer the Claimant towards focussing on what he regarded was particularly important.

[34] Parties should be judicious about their use of time. It is almost always in a party's best interests to provide succinct arguments and to focus on their strongest arguments. The member invited the Claimant to highlight anything he felt was important. I do not see anything inappropriate in how the General Division member handled the document.

[35] I am not satisfied that there is an arguable case that the General Division breached the principles of natural justice by not letting the Claimant read document GD8 in its entirety.

– The Claimant argues that the member did not accept the Claimant's document GD9

[36] The Claimant argues that he did not get a fair chance to present his case because the General Division refused to accept one of his documents.

[37] The Claimant filed document GD9 with the Tribunal after the hearing. There are four parts to the document:

[11] At approximately 46:43 of the audio recording of the General Division hearing on November 7, 2023.

- The first part is a copy of the Claimant's email of January 25, 2023. The General Division accepted this part of the document.

- The second part reiterated and clarified what he said at the hearing.

- The third part deals with the Claimant's request for a copy of the text and audio recording of the hearing. (The Tribunal does not transcribe audio recordings, so these are not available. The Tribunal sent the Claimant a copy of the audio recording on November 10, 2023.)

- The fourth part deals with the Claimant's request for the General Division's reasons. There is no issue about this fourth part.

[38] As for the second part of GD9, the General Division had not asked the Claimant to provide further submissions or evidence after the hearing. Once the hearing concluded, it was within the General Division member's discretion to admit this part of the document into evidence. The member reviewed the narrative and found that it mostly repeated and summarized the evidence that the Claimant had already given at the hearing. She found this part of the document did not add anything to the record. As a result, she preferred to rely on the Claimant's testimony.

[39] The Claimant has not explained why the second part of the document was necessary to support his case. He does not dispute the General Division's determination that it repeated what he had already said at the hearing, and that it did not advance his case in any way.

[40] The second part of the document spoke about the Claimant's immense workload and challenges and that he raised these concerns with his employer. I agree with the General Division that the Claimant had already raised these points and that the discussion largely repeating himself. Indeed, he even said that he "would like to reiterate and clarify."[12]

---

[12] See Claimant's email of November 8, 2023, at GD 9-1.

[41] I am not satisfied that there is an arguable case that the General Division member breached the principles of natural justice by not accepting the Claimant's post-hearing document. I am not satisfied that there is an arguable case that the Claimant did not get a chance to fairly present his case when the General Division did not admit the document into evidence. He had had the chance to file documents up to the date of hearing. The General Division accepted the part of the document that included the copy of an email.

The Claimant does not have an arguable case that the General Division member caused an unreasonable delay

[42] The Claimant does not have an arguable case that the General Division member caused an unreasonable delay. The Claimant argues that there has been an unreasonable delay in his case. He says that the delay has caused prejudice, in that it affected his ability to gather facts. However, the Claimant's arguments of delay are focussed on Service Canada, rather than on the General Division or the Tribunal.

[43] For an arguable case to arise under section 58(1) of the *Department of Employment and Social Development Act*, the failure to observe a principle of natural justice must be one that was committed by the General Division, not by other entities. Hence, I am not satisfied that there is an arguable case that the General Division member caused an unreasonable delay.

The Claimant does not have an arguable case that the General Division member was biased or that there was a reasonable apprehension of bias

[44] The Claimant argues that the General Division member was biased against him. He says that this was evident during the hearing. He says the member refused to consider important issues because she considered them to be "technique issues."[13] He

[13] The Claimant refers to technique issues, but I understand him to mean technical issues.

also says that the member relied on evidence that he says were obviously false and inaccurate.[14]

[45] Any allegations of bias are serious and should not be made lightly. In *Committee for Justice and Liberty et al.* v *National Energy Board et al*.,[15] the Supreme Court of Canada set out the test for a reasonable apprehension of bias. It cited Grandpré J.'s dissenting opinion at the Federal Court of Appeal:

> [T]hat test is "what would an informed person, viewing the matter realistically and practically—and having thought the matter through—conclude. Would he think that it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly."[16]

[46] The threshold for meeting this test is high. As the courts have said, "An allegation of bias requires material evidence in support and cannot be made on mere suspicion, conjecture, or impression of an applicant."[17]

– **The Claimant says the General Division relied on false information**

[47] The Claimant says that the General Division's reliance on documents GD3-15 and GD3-16 show bias.[18] He says the member's reliance shows bias because the documents contained obvious false information. He says the only reason the member accepted the false information is because she was biased against him.

a) GD3-15 are notes that the Respondent, the Canada Employment Insurance Commission (Commission) prepared. The Commission wrote that it had contacted the Claimant on May 16 and 18, 2023. It found that the Claimant's mailbox was full, so it was unable to leave any messages.

---

[14] The Claimant says the evidence at GD 3–15 and GD 3–16 and GD 8-3 to GD 8-5 were false and inaccurate. He says the General Division member relied on them.
[15] See *Committee for Justice and Liberty et al. v National Energy Board et al.*, 1976 CanLII 2 (SCC), [1978] 1 SCR 369.
[16] See *Committee for Justice and Liberty et al. v National Energy Board et al.*, 1976 CanLII 2 (SCC), [1978] 1 SCR 369.
[17] See *Davidson v Canada (Attorney General)*, 2023 FC 1555 at para 77.
[18] See also Claimant's arguments at GD 8-3 to GD 8-5.

The Claimant denies that the Commission ever contacted him on those dates and times described in GD3-15. He says he cannot find any evidence in his phone records that the Commission ever contacted him on those dates and times.

The information at GD3-15 is inconsequential. Nothing turns on the fact that the Commission recorded that it was unable to either speak with the Claimant or unable to leave any voice mail messages with him.

The Commission commented on the document, “Voluntary leaving,” but the General Division did not rely on this comment when it considered whether the Claimant had voluntarily left his employment and whether he had just cause to leave his employment. The General Division simply did not refer to the phone calls of May 16 and 18, 2023 in its decision. In other words, the General Division did not find the Commission’s comment to be determinative of whether the Claimant had voluntarily left his employment.

The General Division reviewed the evidence before it. The member considered the evidence, including the Claimant’s testimony and submissions. The member noted that the Claimant agreed that he had received an offer from his employer but that he refused it, as it did not adequately address or resolve his concerns. It was on this basis that the member determined that the Claimant had voluntarily left his employment.

b) GD3-16 are notes that the Commission made of its phone call on May 18, 2023, with the Claimant’s employer. The Claimant was not part of the telephone discussion. So, I do not see how he can say that the employer did not make those statements to the Commission, or that the Commission incorrectly recorded the conversation.

The employer reportedly stated that the Claimant refused to renew his contract that ended on February 13, 2023. The employer also reportedly stated that it had offered him another contract, but that he refused to take the

offer. The Claimant says the information is incomplete, as it does not show why he refused to renew the contract.

However, the information itself is not inaccurate or misleading. The Claimant did not renew the contract nor accept his employer's offer. This information would not have changed, even if there had been an explanation as to why the Claimant did not renew the contract.

The Claimant wrote to his employer on February 10, 2013, confirming, "my contract will be ended on Feb 13, 2023, next Monday which I will take it as is… Could you please help me to get the termination letter."[19] The Claimant wrote in his summary that he "cannot accept the renewal contract."[20] He explained that he was unable to accept it because he had longstanding concerns that he wanted resolved.

The Claimant also wrote to his employer on February 13, 2023. He wrote, "I will not accept the latest contract/renewal, and I also have concerns of some terms and conditions in it which not fully reflect my current duties, situations, and conditions of works…"[21]

The Claimant also says that the phone conversation between the Commission and his employer lasted 2.5 hours. The Commission's notes are brief. In other words, he says they are unreliable because there must be missing information. So, he argues that the General Division was biased for relying on the notes of the phone call.

The fact that the document says "submitted on May 18, 2023, at 2:22:07" is not definitive proof that the phone call lasted that long. But, as I have noted above, there is no indication that the General Division relied on the notes of the phone call between the Commission and the Claimant's employer when

[19] See Claimant's email dated February 10, 2023, at GD 2–17.
[20] See Claimant's summary, at GD 2–13.
[21] See Claimant's email dated February 13, 2023, at GD 2–18.

deciding whether the Claimant voluntarily left his employment. In any event there is no dispute that the Claimant did not renew his contract.

c) GD3-38 to GD3-40 are notes made by the Commission of its phone call with the Claimant on September 14, 2023. He says the General Division accepted the notes as being an accurate representation of what he discussed with the Commission. But he says the notes are inaccurate. He denies that he only raised any concerns about his working conditions after he had already left his employment. He says that he frequently raised his concerns with his employer throughout the time that he worked.

   In fact, the General Division did not rely on the Commission's notes. The General Division preferred the Claimant's evidence on this point. At paragraph 51, the General Division wrote, "The Appellant insists he never said that he only spoke to his employer after he made the decision not to renew his contract. I believe him."

[48] The Claimant argues that the General Division relied on false information. Some of that evidence was accurate, but either way, the General Division simply did not rely on that evidence. There is no evidentiary support for the Claimant's allegations of bias to meet the test set out by the Supreme Court of Canada.

The Claimant does not have an arguable case that the General Division based its decision on an erroneous finding of fact

– General Division's request for records from the Claimant

[49] The Claimant says the General Division mischaracterized what happened. The General Division wrote, "He said he would send me a copy of the email he sent to his supervisor asking whether his contract would be renewed." The Claimant says what happened is that the member asked him for a copy of the email. While that may be, nothing turns on this characterization. This does not have any impact on the issue of whether the Claimant voluntarily left his employment.

– **Phone record of September 14, 2023**

[50] The General Division did not overlook the document at pages GD 3-38 to 3-40,[22] notes of the Commission's phone call with the Claimant on September 14, 2023. The General Division simply found that the notes were unreliable because the Commission had misunderstood what the Claimant was attempting to say.

[51] The Claimant says the document proves the Commission's bias against him. He says that if the General Division had not overlooked this document, it would have accepted that the Commission was biased, and he says that it would have then rejected the Commission's arguments that the Claimant had voluntarily left his employment without just cause.

[52] The Commission prepared records of its agent's phone call with the Claimant on September 14, 2023. In that call, the agent reportedly asked the Claimant the questions below and the Claimant reportedly responded as set out below:

> Q: Did you speak to your employer about these concerns prior to the end of your contract?
>
> A: It was after my contract finished that I talked to human resources at least twice.
>
> …
>
> Q: Did you speak to your employer about those specific issues before your contract ending?
>
> A: Again, it was after my contract ended that I spoke to human resources twice.
>
> Q: Why didn't you contact human resources prior to your contract ending if you had concerns in the workplace?
>
> A: I didn't know if human resources could solve my problems.[23]

[22] The Claimant also says bias can be found at GD 8-6 to 8-8, but this is where the Claimant commented on GD 3-38 to 3-40.
[23] See Supplementary Record of Claim, on September 14, 2023, at GD 3–38 to 3–39.

[53] The Commission relied on this telephone call between its agent and the Claimant to try to show that the Claimant had not spoken with his employer about the working conditions before he left his employment.

[54] The Claimant denies that he gave these responses. He alleges that the Commission intentionally falsified his statements. He says that the General Division should have rejected these statements because they were false.

[55] The General Division acknowledged the Claimant's arguments that the Commission was biased against him. However, the General Division did not believe that the Commission was biased. It found that the Commission "simply misunderstood [the Claimant]"[24] because English is not his first language.

[56] Ultimately, the General Division did not accept the notes of the Commission's phone call of September 14, 2023. The General Division found that the notes did not prove that the Claimant first spoke with his employer about his working conditions after he left his employment.

[57] The General Division found that the Commission misunderstood the Claimant. The General Division accepted that the Claimant spoke with his supervisor about the working conditions **before** he left his employment.

[58] The General Division member wrote, "It's clear to me from the evidence that the Appellant spoke with his supervisor about his difficult working conditions on a number of occasions prior to deciding not to renew his contract. He did so in an attempt to have a supervisor address his concerns about the workload."[25]

[59] The member also wrote, "The Appellant tried again, when he received the proposed contract renewal, to address these issues. [Citation to GD 3–18] He reminded his supervisor that he had been attempting for some time to get them resolved."[26]

---

[24] See General Division decision, at para 53.
[25] See General Division decision, at para 54.
[26] See General Division decision, at para 55.

[60] The General Division did not overlook the evidence that suggests the Claimant did not speak with his employer about the working conditions until after he left his employment. The General Division clearly addressed this evidence but found that it did not represent what the Claimant says it does.

[61] Also, the General Division did not base its decision on the statements at GD 3-38 to 40. It found that the statements were inaccurate. The General Division believed that the agent did not fully understand the Claimant, thus leading to inaccurate reporting.

[62] I am not satisfied that there is an arguable case that the General Division overlooked this evidence or that it made a perverse or capricious finding in relation to a phone conversation that the Claimant had with the Commission on September 14, 2023. The General Division rejected the evidence. It found that other evidence supported the Claimant that he had discussed his working conditions with his employer before he left his employment. On balance, the evidence favoured the Claimant.

[63] Although the General Division found in the Claimant's favour on this evidence, the Claimant still says the General Division was wrong not to have concluded that the phone notes showed bias. The Claimant says the General Division member made an erroneous assumption that English is not his first language, leading the Commission's agent to a misunderstanding. He says that member's assumption about his English is without any evidentiary basis and that the agent falsified the Claimant's statements.

[64] This issue is irrelevant, however. Whether the Commission was biased or not had no bearing on the issue as to whether the Claimant had just cause for having voluntarily left his employment. He had already left his employment before he spoke with the Commission. The General Division had to examine whether the Claimant had just cause, not how the Commission might have acted towards the Claimant, after he had already left his employment.

[65] Further, the General Division did not have any jurisdiction to offer any relief even if the Commission had been biased.

[66] But more importantly, the General Division did not base its overall decision on the agent's notes or on whether English is the Claimant's first language.

– **The Claimant says the General Division relied on false information**

[67] The Claimant argues that the General Division made factual errors because it relied on "false and fabricated information in Service Canada documents." The Claimant refers to the Commission's notes of phone conversations with the Claimant's employer, at pages GD 3–16 and GD 8-4 to GD8-5. The Claimant says the Commission should have verified the employer's information with him.

[68] The Claimant says that the Commission contacted his employer and spoke for almost 2.5 hours. He says proof of the length of phone call can be calculated. He says the phone call started at 11:57 a.m. and ended at 2:22:07 p.m. Yet, he says the Commission recorded only three lines of text, including one line of false information. He says the Commission fabricated information.

[69] These are very serious allegations against the Commission. But unless the Claimant was able to provide credible evidence to support his allegations, the General Division was well within its rights to reject the Claimant's innuendoes that the Commission distorted or fabricated evidence.

[70] The Claimant did not provide, for instance, any affidavits from his employer that might have refuted the Commission's notes of what was discussed between the Commission and the employer. So, the General Division was left with the Commission's notes.

[71] The Claimant clearly disagrees with the Commission's evidence. It was still up to the General Division to assess and weigh the evidence. So, if there was conflicting evidence, the General Division was left with deciding which evidence it preferred, and to explain why it preferred that evidence, while rejecting other evidence.

[72] The General Division could have found that the evidence was unreliable, for instance, such as when the Commission might have misunderstood the Claimant on the

issue about whether he spoke with his employer before he left his employment about the working conditions.

[73] I am not satisfied that the General Division made a factual error by relying on what he considers was false and fabricated information.

Conclusion

[74] The appeal does not have a reasonable chance of success. Permission to appeal is refused. This means that the appeal will not be going ahead.

Janet Lew
Member, Appeal Division