Citation: *KN v Canada Employment Insurance Commission*, 2024 SST 338

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	K. N.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated January 4, 2024 (GE-22-4039)

Tribunal member:	Janet Lew
Decision date:	April 4, 2024
File number:	AD-24-107

Decision

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

Overview

[2] The General Division found that the Applicant, K. N. (Claimant), did not establish that she was available for work during her benefit period. Therefore, it found that she was disentitled from receiving Employment Insurance benefits. The Claimant is asking for permission to appeal this part of the General Division's decision.[1]

[3] The Claimant argues that the General Division made procedural, legal, and factual errors. In particular, she says that the General Division failed to address the *Employment Insurance Regulations*. She also argues that the claims process was unfair, largely because the Respondent, the Canada Employment Insurance Commission (Commission), failed to help her look for work or obtain Employment Insurance benefits. She also argues that the General Division overlooked some of the evidence.

[4] 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.[2] If the appeal does not have a reasonable chance of success, this ends the matter.[3]

[5] 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.

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[1] The General Division also found that the Claimant had not been suspended from her employment due to misconduct. The Claimant accepts this part of the General Division's decision. She is not asking for permission to appeal this part of the decision.
[2] See *Fancy v Canada (Attorney General)*, 2010 FCA 63.
[3] 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

[6] The issues are as follows:

(a) Is there an arguable case that the process at the General Division was unfair?

(b) Is there an arguable case that the General Division failed to consider the *Employment Insurance Regulations*?

(c) Is there an arguable case that the general Division breached section 153.3(9) of the *Employment Insurance Act*?

(d) Is there an arguable case that the General Division overlooked some of the evidence?

I am not giving the Claimant permission to appeal

[7] 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.[4]

[8] For these types of factual errors, 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.[5]

The Claimant does not have an arguable case that the process at the General Division was unfair

[9] The Claimant does not have an arguable case that the process at the General Division was unfair.

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

[10] The Claimant argues that the Commission should have helped her look for work and obtain benefits. She cites, for instance, sections 59 and 60 of the *Employment Insurance* Act which she says requires the Commission to help claimants. Under those sections, the Commission may establish employment support measures to help insured participants and other workers. Section 60 requires the Commission to maintain a national employment service to provide information on employment opportunities.

[11] However, natural justice is about fairness in the process and ensuring procedural protections. Parties before the General Division enjoy rights to certain procedural protections such as the right to be heard, to know the case against them, to timely receipt of notice of hearings, and the right to an unbiased decision-maker. A procedural error involves the fairness of the process at the General Division. It is not concerned with whether the Commission breached any duties it might have under the *Employment Insurance Act*.

[12] To be clear, I am not examining whether the Commission had any duties under the *Employment Insurance Act* as the Claimant alleges. Rather, I am considering whether there was fairness in the process before the General Division.

[13] The Claimant feels that the Commission should have given her help, but this is distinct from saying that the General Division breached a principle of natural justice. She has not otherwise identified any procedural shortcomings at the General Division, and I do not see any.

[14] The General Division gave the Claimant a fair opportunity to present her case. Indeed, it gave her more time to file documents in support of her case and the Claimant filed a few hundred pages of records, even after the hearing had already finished. And, although the hearing had been scheduled for 90 minutes, it ran for close to two hours, so the Claimant could fully present her case. The General Division also set out the case that the Claimant had to meet. There is no suggestion either that the member was biased or that there was a reasonable apprehension of bias.

[15] I am not satisfied that there is an arguable case that the process at the General Division was unfair.

The Claimant does not have an arguable case that the General Division failed to consider the *Employment Insurance Regulations*

[16] The Claimant does not have an arguable case that the General Division failed to consider the relevant sections of the *Employment Insurance Regulations* when determining whether the Claimant was available for work.

[17] Section 9.001 of the *Employment Insurance Regulations* lists the criteria for determining whether a claimant's efforts to obtain suitable employment constitute reasonable and customary efforts to look for suitable work.

[18] The General Division referred to the section and noted the activities that it had to consider. The General Division then considered what activities the Claimant had undertaken and the extent of her efforts.

[19] Section 9.002 of the *Employment Insurance Regulations* defines what constitutes suitable employment. It includes employment where the nature of the work is not contrary to a claimant's moral convictions or religious beliefs.

[20] The General Division did not explicitly mention section 9.002 of the *Employment Insurance Regulations*. However, the General Division acknowledged that when the Claimant applied for work to certain industries, it "may have been pointless given that she was not vaccinated."[6] It is clear from this that the General Division accepted that, given that vaccination was required by numerous employers, that those places of employment were unsuitable for the Claimant, as she did not undergo vaccination because of her moral convictions and religious beliefs.

[21] The General Division also determined that, although the Claimant was unvaccinated, she had expanded her search for work to industries that did not

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[6] See General Division at para 34.

necessarily require employees to be vaccinated. The General Division found that, even so, her job search efforts in these industries were insufficient.

[22] The General Division clearly considered and applied the relevant sections of the *Employment Insurance Regulations*. Therefore, I am not satisfied that there is an arguable case that the General Division failed to consider the *Employment Insurance Regulations*.

The Claimant does not have an arguable case that the General Division breached section 153.3(9) of the *Employment Insurance Act*

[23] The Claimant does not have an arguable case that the General Division breached section 153.3(9) of the *Employment Insurance Act*.

[24] The Claimant argues that, under section 153.3(9) of the *Employment Insurance Act*, COVID-19 vaccine mandates were unlawful without a state of emergency. She says that any form of upholding or enforcing the mandates is a form of coercion and amounts to a violation of human rights and to a criminal offence.

[25] Section 153.3(9) of the *Employment Insurance Act* deals with the power of the Minister of Employment and Social Development to make interim orders, such as providing for new benefits to mitigate the economic effects of COVID-19. The section does not deal with and is wholly irrelevant to the availability issue under the *Employment Insurance Act*.

[26] I am not satisfied that the Claimant has an arguable case that the General Division breached section 153.3(9) of the *Employment Insurance Act*.

The Claimant does not have an arguable case that the General Division overlooked some of the evidence

[27] The Claimant does not have an arguable case that the General Division overlooked some of the evidence. She argues that it failed to mention that there was a lack of suitable employment. She says that she had a list of places where she could have worked, but for the fact that she would have had to disclose medical information.

She felt that she should not have been compelled to disclose her medical information to any prospective employers. She says that she eventually found work, but that the General Division also failed to mention this.

[28] In fact, the General Division considered the Claimant's job search efforts. The General Division also acknowledged that the Claimant may not have contacted certain prospective employers because she would have been required to provide proof of vaccination.[7]

[29] The Claimant returned to work. She confirmed this in her email of September 2, 2023.[8] However, she did not mention when she returned to work.

[30] The General Division did not mention that the Claimant had returned to work. However, there is no requirement in law that a decision-maker has to refer to all of the evidence before it. There is a general presumption that a decision-maker considers all of the evidence before it.[9]

[31] A decision-maker would have to consider and analyze that evidence if it is of some material value and would affect the outcome, but that was not the case here. The fact that the Claimant had returned to work would not have established that she was available throughout her benefit period, nor established that she was entitled to receive Employment Insurance benefits when she was not working.

Conclusion

[32] 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

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[7] See General Division decision at paras 33 to 36.
[8] See email of September 2, 2023, at GD11.
[9] See *Simpson v Canada (Attorney General)*, 2012 FCA 82.