



Citation: *RB v Canada Employment Insurance Commission*, 2024 SST 525

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: R. B.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated March 22, 2024
(GE-24-131)

Tribunal member: Janet Lew

Decision date: May 13, 2024

File number: AD-24-263

Decision

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

Overview

[2] The Applicant, B. R. (Claimant), is seeking leave to appeal the General Division decision.

[3] The General Division determined that the Respondent, the Canada Employment Insurance Commission proved that the Claimant lost his job because of misconduct.

[4] The General Division found that the Claimant had shared confidential and highly sensitive information with a customer of his personal business, against the interests of his employer. The General Division found that the Claimant knowingly or should have known that he was violating his employer's Code of Conduct and Ethics by doing so. It also found that he was aware of or should have been aware of the consequences of violating his employer's Code of Conduct.

[5] As the General Division found that the Claimant had committed misconduct, he was disqualified from receiving Employment Insurance benefits.

[6] The Claimant denies that he committed any misconduct. He says that he has new evidence. He says that this evidence will show that he did not violate his employer's Code of Conduct. He also has a medical note that explains why he was unable to make decisions in the best interests of his corporate relationships.

[7] 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

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."

[8] 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.

Issues

[9] The issues are as follows:

- (a) Is there an arguable case that the Claimant can rely on new evidence in an Application to the Appeal Division (Employment Insurance section)?
- (b) Is there an arguable case that the General Division made any jurisdictional, procedural, legal, or factual errors?

I am not giving the Claimant permission to appeal

[10] 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

[11] 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.⁴

The Claimant does not have an arguable case that he can rely on new evidence in an Application to the Appeal Division (Employment Insurance section)

[12] The Claimant does not have an arguable case that the General Division can rely on new evidence. Generally, the Appeal Division does not accept new evidence regarding Employment Insurance claims.

[13] The Claimant says that he has new evidence that shows that he did not violate his employer's Code of Conduct and Ethics. He says that he has documents that will

³ See section 58(1) of the DESD Act.

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

show that he did not use his employer's information. He built his own relationships, sold different services, and worked outside normal business hours.

[14] The Claimant also has a medical note. He says that it shows that he was under "extreme stress, anxiety and [was dealing with] significant personal life problems..."⁵ all of which caused him to be unable to make decisions in the best interests of his corporate relationship.

[15] However, the courts have consistently held that generally the Appeal Division does not consider new evidence. As the Federal Court of Appeal said in a case called *Gittens*:

[13] ... Under the rules set by Parliament, hearings before the Appeal Division are not redos based on updated evidence of the hearing before the General Division. They are instead reviews of General Division decisions based on the same evidence.⁶

[16] The Court of Appeal has set out the circumstances when the Appeal Division may allow new evidence. New evidence can be considered when it provides general background information, shows procedural defects, or exceptionally, in cases where both parties agree that an important document should be considered.⁷ Those circumstances do not exist here. New evidence is not permitted where it is used to bolster a claimant's case, particularly when they could have produced this evidence before.

[17] The Claimant's offer to file new supporting evidence does not raise an arguable ground.

⁵ See Application to the Appeal Division: Employment Insurance, at AD 1-4.

⁶ See *Gittens v Canada (Attorney General)*, 2019 FCA 256 at para 13.

⁷ See *Sibbald v Canada (Attorney General)*, 2022 FCA 157 at para 39.

The Claimant does not have an arguable case that the General Division made any jurisdictional, procedural, legal, or factual errors

[18] The Claimant does not have an arguable case that the General Division made any jurisdictional, procedural, legal, or factual errors.

[19] The Claimant does not suggest that the General Division made any jurisdictional, procedural, or legal errors, or that it based its decision on any erroneous findings of fact without regard for the evidence before it. Even so, I will review the General Division's decision as well as the hearing record to ensure that the General Division did not make any of these types of errors.

[20] Under the rules of procedural fairness, an applicant has the right to know the case they have to meet, the right to answer that case, and the right to have their case considered fully and fairly by an impartial decision-maker.⁸ Here, there is nothing to suggest that the Claimant did not receive a fair hearing or the chance to fully present his case. There is nothing to suggest either that the General Division member was biased or that there was a reasonable apprehension of bias.

[21] The issue that came before the General Division was whether the Claimant had committed any misconduct. The General Division addressed and decided this issue. It did not exceed its authority or fail to decide anything that it should have decided.

[22] The General Division properly identified the legal test for misconduct and properly applied the law to the facts, and its findings were consistent with the evidence before it.

[23] The Claimant disagreed with his employer that he had committed any misconduct. He explained this in his Notice of Appeal to the General Division. The General Division did not overlook this evidence. It simply did not accept the Claimant's explanation, which it was entitled to do, based on the preponderance of evidence.

⁸ See *Palozzi v Canada (Attorney General)*, 2024 FCA 81 at para 9, citing *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69, [2019] F.C.R. 121 at para 41.

[24] To some extent, the Claimant is seeking a reassessment and seeking a different conclusion from the one that the General Division made. But, as the Federal Court said in *Tracey*,⁹ in an application for leave to appeal (in Employment Insurance matters), the Appeal Division has a limited role. It has to determine whether the appeal has a reasonable chance of success. It does not reassess evidence or reweigh the factors considered by the General Division in order to reach a different conclusion.

[25] The possibility that the evidence could be reassessed in the applicant's favour does not give rise an arguable case sufficient to grant leave to appeal.¹⁰

[26] I am not satisfied that the Claimant has an arguable case that the General Division made any jurisdictional, procedural, legal, or factual errors.

Conclusion

[27] 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

⁹ See *Tracey v Canada (Attorney General)*, 2015 FC 1300 at para 46.

¹⁰ See *Canada (Attorney General) v Tsagbey*, 2017 FC 356 at para 77.