Citation: *JZ v Canada Employment Insurance Commission*, 2024 SST 710

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	J. Z.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated April 16, 2024 (GE-24-755)

Tribunal member:	Glenn Betteridge
Decision date:	June 21, 2024
File number:	AD-24-325

Decision

[1] I am not giving J. Z. permission to appeal. This means his appeal won't go ahead. And the General Division decision stands unchanged.

Overview

[2] J. Z. is the Claimant in this case. He applied for Employment Insurance (EI) regular benefits when his job ended.

[3] The Canada Employment Insurance Commission (Commission) decided that he lost his job for misconduct under the *Employment Insurance Act* (EI Act). A person who loses their job for misconduct can't get EI benefits.[1] He appealed the Commission's decision.

[4] The General Division dismissed his appeal. It found he lost his job because he attacked a co-worker without provocation. Then it decided that reason was misconduct. His employer had a zero-tolerance policy for workplace violence. He knew about the policy. And he should have known his employer could dismiss him for attacking his co-worker.

[5] The Claimant has asked for permission to appeal the General Division decision.

Issues

[6] I have to decide two issues:

- Is there an arguable case the General Division made a jurisdictional error?
- Is there an arguable case the General Division made an important factual error?

[1] See section 30(1) of the *Employment Insurance Act* (EI Act).

I am not giving the Claimant permission to appeal

The test for getting permission to appeal is easy to meet

[7] I can give permission to appeal if the Claimant can show there is an arguable case the General Division:

- didn't decide an issue it should have decided, or decided an issue it should not have decided—this is called a jurisdictional error
- based its decision on an important factual error[2]

[8] An arguable case means the same thing as a reasonable chance of success. This test is easy to meet.[3]

[9] I reviewed the General Division appeal file (GD2, GD3, GD4, GD6, GD7), listened to the General Division hearing, and read the General Division decision.

There isn't an arguable case the General Division made a jurisdictional error

[10] The Claimant checked the "error of jurisdiction" box on his appeal form.[4] Then he wrote that his employer still owed him two weeks vacation pay and didn't want to pay for his dental insurance.[5] (He testified he lost a tooth in a fight with a co-worker.)

[11] The Claimant also seems to be arguing that his employer dismissed him unlawfully. He says he is a hard-working and honest worker and always adhered to discipline. He said his employers lied, favoured his co-worker, treated him unfairly, and wrongly dismissed him instead of his co-worker. By this, I understand that he is arguing

---

[2] These are grounds of appeal in section 58(1) of the *Department of Employment and Social Development Act* (DESD Act). I call these grounds errors because that is plain language.
[3] Section 58(2) of the DESD Act says that I give permission to appeal if the appeal has a reasonable chance of success on a ground of appeal. This is the same as having an arguable case. See *O'Rourke v Canada (Attorney General)*, 2018 FC 498 at paragraph 16; *Ingram v Canada (Attorney General)*, 2017 FC 259 at paragraph 16; and *Osaj v Canada (Attorney General)*, 2016 FC 115 at paragraph 12.
[4] See AD1-5.
[5] See AD1C-2.

he wanted the General Division to decide his appeal based on his employer's behaviour, including his unlawful dismissal.

[12] The General Division makes an error if it acts beyond its decision-making power.[6] In other words, it makes an error if it decides an issue it has no power to decide or it doesn't decide an issue it has to decide. In law, this is called a jurisdictional error.

[13] The Claimant seems to be arguing the General Division should have decided issues about his vacation pay and dental benefits. He asked the General Division about these issues near the end of the hearing. The General Division explained that it only had the power to decide the misconduct issue under the EI Act. It didn't have the power to consider or decide whether he had been wrongfully dismissed, whether his employer still owed him vacation pay, or whether his employer should have continued his dental benefits.

[14] The Claimant also says the General Division should have decided whether his employer treated him unfairly or wronged him by dismissing him rather than his co-worker. At the hearing, the General Division explained that he had no power to decide these issues. In its decision, it cited court cases that say it has to focus on the employee's conduct and decide whether that conduct was misconduct.[7] The General Division has no power to decide whether the Claimant was wrongfully dismissed, under employment law or other laws.[8] The General Division has to follow these binding court cases. So, it didn't have to decide whether his employer had treated him unfairly or went against the law when it fired him.

[15] So, the Claimant hasn't shown there is an arguable case the General Division didn't decide an issue it should have decided. The General Division only had the legal power (jurisdiction) to decide whether the Commission had proven he lost his job for misconduct. And it decided that issue.

---

[6] Section 58(1)(a) of the DESD Act says it's a ground of appeal where the General Division acts beyond or refuses to exercise its jurisdiction.
[7] See paragraphs 36 and 50 of the General Division decision.
[8] See, for example, *Khodykin v Canada (Attorney General)*, 2024 FCA 96 at paragraph 11.

There isn't an arguable case the General Division made an important factual error

[16] The Claimant checked the "important error of fact" box on his appeal form.[9] And he commented on certain paragraphs of the General Division decision.[10] Not all of the Claimant's arguments point to an error of fact.[11]

[17] The General Division makes an important factual error if it bases its decision on a factual finding it made by ignoring or misunderstanding the evidence.[12] In other words, if the evidence goes squarely against or doesn't support a factual finding the General Division made.

[18] The law also says I can presume the General Division reviewed all the evidence—it doesn't have to refer to every piece of evidence.[13]

[19] Some of the information the Claimant gives on his appeal form is new evidence. In other words, that information wasn't part of the evidence before the General Division. But I can't consider this new evidence when I decide whether to give him permission to appeal.[14]

[20] I considered the Claimant's argument about each error of fact he says the General Division made in a particular paragraph, and then compared it to the evidence (documents and testimony).

---

[9] See AD1-5.
[10] See AD1C-2.
[11] He commented on the following paragraphs of the General Division decision, but his comments were new evidence or didn't include an argument about an error of fact: 30 and 63.
[12] Section 58(1)(c) of the DESD Act says it is a ground of appeal where the General Division based its decision on an erroneous finding of fact it made in a perverse or capricious manner or without regard for the material before it. I have described this ground of appeal using plain language, based on the words in the Act and the cases that have interpreted the Act.
[13] See *Sibbald v Canada (Attorney General)*, 2022 FCA 157 at paragraph 46.
[14] As a general rule, the Appeal Division can't consider new evidence. There are three recognized exceptions to this rule, and there may be other circumstances where the Appeal Division can consider new evidence. See *Sibbald v Canada (Attorney General)*, 2022 FCA 157 at paragraphs 35 to 40. In this appeal, the Claimant's new evidence didn't meet a recognized exception and I see no other reason that I have to consider it.

- Paragraph 20: The Claimant says he never saw or signed a workplace violence and harassment policy.

  He testified that he was aware there should be zero tolerance against violence in his workplace.[15]

- Paragraph 27: The Claimant says he wasn't sent home or dismissed. He shook hands with his boss and went home to recover from his injuries.

  The General Division's decision that the Claimant committed misconduct doesn't depend on whether he was sent home or went home on his own after the incident that led to his dismissal.

- Paragraph 29: The Claimant says that his employer didn't make the decision to dismiss him. The employer's lawyer made that decision.

  The company president signed the termination letter, which was on the company letterhead.[16]

- Paragraph 54: The Claimant argues he was shocked that his employer dismissed him. He didn't know that would happen.

  The General Division found the Claimant "should have known"—not that he did know he could be dismissed. And the evidence supports that finding.

- Paragraph 68: The Claimant argues the company owners misled the company's lawyer to make the wrong decision about dismissing him.

  The General Division reviewed and weighed the conflicting evidence about the reason he was dismissed.[17]

[15] Listen to the recording of the General Division hearing starting a 54:10.
[16] See GD3-25 to GD3-28.
[17] See paragraphs 18 to 30 of the General Division decision.

[21] So, the Claimant hasn't shown there is an arguable case the General Division ignored or misunderstood any evidence it had to consider. And he hasn't shown there is an arguable case the General Division based its decision on an error about the facts. In other words, he hasn't shown an arguable case the General Division made an important factual error.

There is no other reason I can give the Claimant permission to appeal

[22] The Claimant is representing himself in this appeal. And English isn't his first language. So, I looked beyond what he wrote to see if there is an arguable case the General Division made any other errors.[18]

[23] The General Division identified the issues it had to decide and the correct legal tests to decide those issues. Then it applied those tests. I didn't find important evidence that the General Division ignored or misunderstood. And nothing shows me there is an arguable case the General Division failed to give the Claimant a full and fair opportunity to present his case.

[24] This means there isn't an arguable case the General Division made any other error I can consider.

Conclusion

[25] Because the Claimant's appeal doesn't have a reasonable chance of success, I can't give him permission to appeal.

[26] This means his appeal won't go ahead. And the General Division decision stands unchanged.

Glenn Betteridge
Member, Appeal Division

[18] Where a self-represented claimant is asking for permission to appeal a General Division decision, I should not apply the permission to appeal test in a mechanistic manner. I take this to mean I should review the law, the evidence, and the decision from the General Division. See for example *Griffin* v *Canada (Attorney General)*, 2016 FC 874; *Karadeolian* v *Canada (Attorney General)*, 2016 FC 615; and J*oseph* v *Canada (Attorney General)*, 2017 FC 391.