



Citation: *AM v Canada Employment Insurance Commission and X*, 2024 SST 1327

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant:	A. M.
Respondent:	Canada Employment Insurance Commission
Added Party:	X
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Decision under appeal:	General Division decision dated September 9, 2024 (GE-24-1155)
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Tribunal member:	Melanie Petrunia
Decision date:	November 1, 2024
File number:	AD-24-666

Decision

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

Overview

[2] The Applicant, A. M., is the Claimant in this matter. She was working for the Added Party, X (Employer). When she stopped working, she applied for employment insurance (EI) regular benefits.

[3] The Respondent, the Canada Employment Insurance Commission (Commission) initially decided that the Claimant lost her job due to misconduct and was disqualified from receiving benefits. On reconsideration, the Commission changed its decision.

[4] The Employer then appealed the Commission's decision to the Tribunal's General Division. The General Division allowed the Claimant's appeal and found that the Claimant lost her job due to misconduct.

[5] The Claimant is now asking to appeal the General Division decision to the Tribunal's Appeal Division. However, she needs permission for her appeal to move forward. The Claimant argues the General Division did not follow procedural fairness.

[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 did not follow procedural fairness by not considering that her access to evidence was limited?
- b) Is there an arguable case that the General Division erred by not considering whether the Employer's appeal was late?

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?¹

[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).²

[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;
- c) based its decision on an important factual error;³ or
- d) made an error in law.⁴

[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 her case and possibly win. I should also be aware of other possible grounds of appeal not precisely identified by the Claimant.⁵

¹ 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.

² DESD Act, s 58(2).

³ 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.

⁴ This paraphrases the grounds of appeal.

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

– **The General Division decision**

[12] The Claimant had previously appealed another General Division decision to the Appeal Division. In that matter, the Claimant did not attend the hearing and General Division allowed the Employer's appeal.⁶

[13] The Claimant's appeal was allowed. The Appeal Division found that the Claimant did not attend the hearing because she was misinformed by Tribunal staff. The General Division made an error when it proceeded without her. The matter was returned to the General Division for reconsideration.⁷

[14] A new hearing was held at the General Division and the Claimant participated. The General Division found that the Claimant lost her job due to misconduct. It decided that the reason that the Claimant was let go was because of a disrespectful conversation on the company's messaging platform and possible time theft.⁸

[15] The General Division found that the conduct, making disrespectful comments about the Employer, is considered misconduct according to the EI Act. It found that the Claimant's conduct was reckless and that she should have known that she could lose her job.⁹

No arguable case the General Division did not follow procedural fairness

[16] The Claimant argues that the process before the General Division was procedurally unfair because it did not consider her limited access to evidence. She says that her access to all work-related communication streams was revoked when she was terminated.¹⁰

[17] The Claimant made this argument in her previous appeal to the Appeal Division. In that decision, the Appeal Division noted that this argument is not a reviewable error

⁶ See General Division decision dated July 4, 2023.

⁷ Appeal Division decision dated March 19, 2024 in AD-23-619

⁸ ADN1A

⁹ See General Division decision at para 57.

¹⁰ ADN1-3

and that the General Division does not have the power to compel another party to produce evidence.¹¹

[18] I agree. The General Division did not fail to provide a fair process by not considering her limited access to evidence. The Claimant participated in the hearing at the General Division and provided her testimony. She made the same argument at the General Division, and it was considered in its decision.¹²

[19] The General Division accepted that the Claimant might have been able to provide additional context with access to the messages that the Employer had. However, it found that this would not have impacted its findings concerning misconduct.¹³

[20] There is no arguable case that the General Division failed to provide a fair process. It considered the Claimant's arguments and evidence concerning her access to evidence and addressed it in its decision.

[21] The Claimant also argues that the process was unfair because the General Division did not consider that the Employer's appeal was late. She says that the reconsideration decision is dated December 5, 2022, and the Employer's appeal was not filed within 30 days.¹⁴

[22] When this matter was returned to the General Division, the parties were invited to make written submissions both before and after the hearing.¹⁵ The Claimant did not raise the issue of the lateness of the appeal. I find that there is no arguable case that the General Division did not follow procedural fairness by not considering the lateness of the appeal.

¹¹ Appeal Division decision dated March 19, 2024 in AD-23-619 at paras 50 and 51.

¹² General Division decision at para 55.

¹³ General Division decision at para 56.

¹⁴ ADN1-3

¹⁵ See RGD2 and General Division decision at para 9.

[23] I note that, in the Employer's original appeal to the General Division, it states that they received the reconsideration decision on December 14, 2022.¹⁶ It is from this date that they had 30 days to appeal.¹⁷ Thirty days following the date on which the decision was communicated fell on a weekend (January 13, 2023), which means that the appeal had to be filed by January 15, 2023 and it was filed the day prior.

[24] I find that the Claimant's arguments do not have a reasonable chance of success. Aside from the Claimant's arguments, I have also considered the other grounds of appeal. The Claimant has not pointed to any errors of jurisdiction, and I see no evidence of such errors. There is no arguable case that the General Division made an error of law or based its decision on any factual errors.

[25] 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

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

Melanie Petrunia
Member, Appeal Division

¹⁶ GD2-4

¹⁷ See *Department of Employment and Social Development Act* at section 52(1)(a).