



Citation: *SK v Canada Employment Insurance Commission*, 2025 SST 16

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

**Applicant:** S. K.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated December 30, 2024  
(GE-24-3880)

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**Tribunal member:** Glenn Betteridge

**Decision date:** January 8, 2024

**File number:** AD-25-7

## Decision

[1] I am not giving S. K. leave (permission) to appeal.

[2] This means her appeal won't go forward. And the General Division decision stands unchanged.

## Overview

[3] S. K. is the Claimant. She lost her job then made a claim for Employment Insurance (EI) regular benefits.

[4] The Canada Employment Insurance Commission (Commission) decided she was disqualified from getting benefits. It says she lost her job for a reason that counts as misconduct under the *Employment Insurance Act* (EI Act).<sup>1</sup>

[5] She asked the Commission to reconsider. The Commission upheld its decision. So she appealed.

[6] This Tribunal's General Division dismissed her appeal. It decided she lost her job for misconduct. Her employer dismissed her because she created a false offer of employment letter (paragraph 12). She intentionally created the letter—she admitted it (paragraph 27). And she **should have known** this would jeopardize the relationship of trust with her employer and there was a possibility she would lose her job (paragraph 32).

[7] The Claimant has applied for permission to appeal the General Division decision. I can give her permission if her appeal has a reasonable chance of success. Unfortunately, it doesn't.

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<sup>1</sup> See section 30 of the *Employment Insurance Act* (EI Act).

## Issue

[8] I have to decide whether the Claimant's appeal has a reasonable chance of success.

## I am not giving the Claimant permission to appeal

[9] I read the Claimant's application to appeal.<sup>2</sup> I read the General Division decision and reviewed the documents in the General Division file.<sup>3</sup> And I listened to the recording of the General Division hearing.

[10] For the reasons that follow, I can't give the Claimant permission to appeal.

## The test for getting permission to appeal

[11] To get permission, the Claimant's appeal has to have a reasonable chance of success.<sup>4</sup> This means she has to show an arguable case the General Division:

- used an unfair process, prejudged the case, or was biased—this is a procedural fairness error
- made an important factual error
- made a legal error
- didn't decide an issue it should have decided, or decided an issue it had no power to decide—this is a jurisdictional error<sup>5</sup>

[12] I have to start by considering the grounds of appeal the Claimant put in her application.<sup>6</sup>

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<sup>2</sup> See AD1 and AD1B.

<sup>3</sup> See GD2, GD3, GD4, GD6, and GD6A.

<sup>4</sup> See section 58(2) of the *Department of Employment and Social Development Act* (DESD Act).

<sup>5</sup> These are the grounds of appeal in section 58(1) of the DESD Act. I call them errors. And see *Brown v Canada (Attorney General)*, 2024 FC 1544 at paragraph 41, citing *Osaj v Canada (Attorney General)*, 2016 FC 115 at paragraph 12.

<sup>6</sup> See *Twardowski v Canada (Attorney General)*, 2024 FC 1326 at paragraph 26.

[13] The Claimant is representing herself. So, I also reviewed the General Division record to see if there was an arguable case it made an error.<sup>7</sup>

**The Claimant hasn't shown an arguable case the General Division made an error, and I didn't find an arguable case**

[14] The Claimant didn't check any error box on her application form. She wrote, "I feel that stating I lost my job due to my own misconduct is not appropriate."<sup>8</sup> She sent a separate page with her reasons for appealing.<sup>9</sup>

[15] The Claimant is essentially rearguing her appeal, hoping for a different outcome. She disagrees her conduct was misconduct. She says her actions weren't intentional. She says she acted for personal reasons and isn't at fault.

[16] The Appeal Division process isn't her chance to reargue her appeal. At this stage, she has to show an arguable case the General Division made an error. But none of the Claimant's reasons show an arguable case.

[17] There isn't an arguable case the General Division made a jurisdictional error. It identified the legal issue it had to decide in the Claimant's appeal (paragraph 8). Then it decided only that issue.

[18] There isn't an arguable case the General Division made a legal error. The Claimant seems to misunderstand the legal meaning of misconduct under the EI Act. The General Division correctly set out the legal test for misconduct (paragraphs 9, and 13 to 17). To prove misconduct, the Commission didn't have to show the Claimant intended to do something wrong or illegal or to harm her employer (paragraph 15).

[19] Then the General Division used the correct legal test to decide the Claimant's appeal. The Commission didn't have to show the Claimant actually knew there was a possibility her employer would dismiss her for making a false employment letter. It was

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<sup>7</sup> The courts have said the Appeal Division should not apply the permission to appeal test mechanically. See for example *Griffin v Canada (Attorney General)*, 2016 FC 874; *Karadeolian v Canada (Attorney General)*, 2016 FC 615; and *Joseph v Canada (Attorney General)*, 2017 FC 391.

<sup>8</sup> See AD1-5.

<sup>9</sup> See AD1-1.

enough to show she **should have known** she could lose her job for that (paragraph 16). The General Division considered the evidence and decided she should have known (paragraph 32).

[20] The General Division's reasons are more than adequate. The General Division had to apply the law. It could not change it. And it didn't have the power to decide the Claimant's appeal based on humanitarian grounds. The General Division explained this (paragraph 34).

[21] The Claimant hasn't shown an arguable case the General Division made an important factual error. She says, "stating that the falsified document appeared to have been both for employment and immigration (workpermit) purposes is completely unacceptable."<sup>10</sup>

[22] That was the Commission's position, not a finding the General Division made (paragraph 20). The purpose of the letter (employment *versus* immigration *versus* both) wasn't relevant to a legal issue the General Division had to decide. What was legally relevant was the Claimant falsified a letter using her employer's information. The General Division found the Claimant was dismissed for writing a false offer of employment, then based its decision on that finding (paragraphs 12, 27, and 32). This shows me the General Division didn't misunderstand the evidence about the purpose of the letter—even if the purpose was relevant.

[23] I reviewed the evidence before the General Division (the documents and hearing recording) and compared that to the General Division's factual findings. I didn't find any relevant evidence the General Division misunderstood or ignored. In other words, the General Division's decision is supported by the relevant evidence.

[24] Finally, the General Division record doesn't show an arguable case the General Division used an unfair process. The Claimant received the Commission's evidence and

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<sup>10</sup> See AD1-1.

arguments several weeks before the hearing. She sent in her evidence and arguments.<sup>11</sup>

[25] At the hearing, the General Division explained the law. Then the Member gave the Claimant a full and fair opportunity to present her case. The Member asked the Claimant questions where the documentary evidence was lacking, or her testimony wasn't clear. And the General Division made its decision impartially, based only on the applicable law and relevant evidence.

## **Conclusion**

[26] The Claimant hasn't shown an arguable case the General Division made an error the law lets me consider. And I didn't find an arguable case.

[27] This means her appeal doesn't have a reasonable chance of success. So, I can't give her permission to appeal the General Division decision.

Glenn Betteridge  
Member, Appeal Division

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<sup>11</sup> See GD6 and GD6A.