



Citation: *PR v Canada Employment Insurance Commission*, 2025 SST 30

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: P. R.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated December 13, 2024
(GE-24-3790)

Tribunal member: Glenn Betteridge

Decision date: January 15, 2025

File number: AD-25-23

Decision

[1] I am not giving P. R. permission to appeal the General Division decision.

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

Overview

[3] P. R. is the Claimant. He lost his job then made a claim for Employment Insurance (EI) regular benefits.

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

[5] He asked the Commission to reconsider. He said he was dismissed without cause. The Commission stuck with its decision. So, he appealed to this Tribunal's General Division.

[6] The General Division dismissed his appeal. It found he lost his job because he wasn't logging in (clocking on) to tasks at work. And this reason was misconduct under the EI Act. He admitted he didn't always log on to jobs, which he sometimes did intentionally. Even if it wasn't intentional, he acted in a way that was so reckless it was almost wilful. Finally, it found he knew or should have known he could lose his job for not logging on because his employer repeatedly warned him.

[7] The Claimant has asked for permission to appeal the General Division decision. To get permission, he has to show his appeal has a reasonable chance of success. Unfortunately, he hasn't.

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

Issues

[8] I have to decide two issues.

- Is there an arguable case the General Division made an important error of fact by ignoring or misunderstanding his evidence that he is a forgetful person?
- Is there an arguable case the General Division made any other error I can consider?

I am not giving the Claimant permission to appeal

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

[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.⁴ This means he has to show an arguable case the General Division made one of these errors:

- used an unfair process or was biased
- made an important factual error
- made a legal error

² See AD1.

³ See GD2, GD3, and GD4.

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

- didn't use its decision-making power properly⁵

[12] I have to start by considering the grounds of appeal the Claimant set out in his application.⁶

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

[13] The Claimant checked the box that says the General Division made an important error of fact.⁷

[14] He argues the General Division totally ignored his evidence that he was a forgetful person.⁸ He explains he was “wired after several months working with the company.” This made him forgetful about logging on. And he is a forgetful person who sometimes forgets to do basic things. That is “what makes me, me.” He said this several times during the hearing.

[15] I listened to the General Division hearing. The Claimant testified that he is a forgetful person.⁹ And he explained how this affected his logging in to work jobs. He admits sometimes he forgot to log in. When he was working on something, he was really focused on his work, so he would forget to log in to the job. Other times he would be pulled away from his work to do others' work or to look for the log-in sheet. He would forget to log in when these things happened.

[16] He also testified logging on wasn't important, not as important as doing a good job. He says his employer knew he was forgetful—when he worked through the agency—but still hired him.

⁵ These are the grounds of appeal in section 58(1) of the DESD Act. I call them errors. For the “arguable case” test, see *Brown v Canada (Attorney General)*, 2024 FC 1544 at paragraph 41, citing *Osaj v Canada (Attorney General)*, 2016 FC 115 at paragraph 12.

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

⁷ See AD1-3.

⁸ See AD1-3 and AD1-8.

⁹ The Claimant testified about being forgetful and explained why he forgot to log in. Listen to the General Division hearing recording at 11:40, 13:18, 19:35, 27:57; 29:27, and 42:20.

[17] The General Division makes an important factual error if it bases its decision on a factual finding it made by ignoring or misunderstanding relevant evidence.¹⁰ In other words, some evidence goes squarely against or doesn't support a factual finding the General Division made to reach its decision.

[18] The General Division's reasons show me there isn't an arguable case it ignored or misunderstood the Claimant's evidence about his forgetfulness.

[19] The General Division referred to the Claimant's evidence about his forgetfulness (paragraphs 31 in the 2nd, 6th and 11th bullets, 36, 43). Then it weighed his evidence of his forgetfulness, along with the other evidence, and applied the law of misconduct (paragraphs 36 to 38). For the General Division, the Claimant didn't show he was prevented from logging on for reasons beyond his control (paragraph 40). The fact the Claimant knew he was forgetful but didn't take steps to address it showed his conduct was reckless to the point of being wilful (paragraphs 38, 43 and 44).

[20] I want to point out two more things about the law and how the General Division handled the evidence.

[21] First, the Claimant relied on his forgetfulness to argue his conduct wasn't misconduct. He argued his forgetfulness meant his conduct wasn't wilful.¹¹

[22] But the Commission didn't have to prove his conduct was wilful (intentional, conscious, or deliberate). The law says that conduct that is so reckless it is almost wilful can be misconduct under the EI Act. The General Division understood and properly applied this law to the evidence—and decided his conduct was reckless to the point of being wilful (paragraphs 24, 34, 38, 56, and 66).

[23] Second, it's the General Division's job to weigh the evidence and make factual findings. The Claimant doesn't agree with the weight the General Division gave to his

¹⁰ 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.

¹¹ Listen to the General Division hearing starting at 42:20.

evidence about forgetfulness. But his disagreement doesn't show the General Division made an error. In other words, disagreeing with the General Division isn't a ground of appeal the law lets me consider. He had to show it made it ignored or misunderstood his evidence.

[24] The General Division didn't have to accept the Claimant's underlying argument that his forgetfulness was so severe there was nothing he could do to overcome it. The General Division looked at the relevant evidence. Then it weighed that evidence and found the Claimant "still had the ability to meet that job requirement but either just chose not to or simply forgot" (paragraph 44). I can't reweigh the evidence to come to a different finding.¹²

[25] To summarize this section, the Claimant hasn't shown the General Division ignored or misunderstood his evidence about his forgetfulness. It considered and weighed that evidence, then made findings of fact supported by the relevant evidence. This means there isn't an arguable case the General Division made an important factual error.

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

[26] The Claimant is representing himself. So, I considered whether there was an arguable case the General Division made another type of error.¹³

[27] I didn't find an arguable case the General Division used its decision-making power improperly. The General Division correctly set out the issue it had to decide (paragraph 6). Then decided only that issue.

[28] There isn't an arguable case the General Division made a legal error. The General Division stated and used the law it has to use to decide a misconduct appeal (paragraphs 7, 23 to 27, 33, and 34). And its detailed reasons are more than adequate.

¹² See *Tracey v Canada (Attorney General)*, 2015 FC 1300 at paragraph 33.

¹³ The Federal Court has said the Appeal Division should not apply the permission to appeal test in a mechanistic manner. 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.

[29] Finally, I reviewed the General Division decision, file, and hearing recording. Nothing suggested the General Division process was unfair. And nothing suggested the General Division member was biased.

Conclusion

[30] 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.

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

Glenn Betteridge
Member, Appeal Division