



Citation: *SH v Canada Employment Insurance Commission*, 2025 SST 43

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: S. H.
Representative: D. H.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated January 14, 2025
(GE-24-3856)

Tribunal member: Stephen Bergen

Decision date: January 21, 2025

File number: AD-25-43

Decision

[1] I am refusing leave (permission) to appeal. The appeal will not proceed.

Overview

[2] S. H. is the Applicant. I will call him the Claimant because this application is about his claim for Employment Insurance (EI) benefits. The Respondent is the Canada Employment Insurance Commission, which I will call the Commission.

[3] The Claimant worked in a residential care facility. His employer dismissed him after three written warnings for violating its policies and protocols related to the safety and security of residents.

[4] The Claimant applied for EI benefits, but the Commission found that the Claimant had been dismissed for misconduct. As a result, it refused to pay him benefits. The Claimant asked the Commission to reconsider but it would not change its decision.

[5] The Claimant appealed to the General Division of the Social Security Tribunal. The General Division dismissed his appeal. Now the Claimant is asking the Appeal Division for permission to appeal.

[6] I am refusing permission to appeal. The Claimant has not made out an arguable case that the General Division made an error of procedural fairness or an important error of fact.

Issues

[7] Is there an arguable case that the General Division acted in a way that was procedurally unfair?

[8] Is there an arguable case that the General Division made an important error of fact?

I am not giving the Claimant permission to appeal

General Principles

[9] For the Claimant's application for leave to appeal to succeed, his reasons for appealing would have to fit within the "grounds of appeal." To grant this application for leave and permit the appeal process to move forward, I must find that there is a reasonable chance of success on one or more grounds of appeal.

[10] The grounds of appeal identify the kinds of errors that I can consider. I may consider only the following errors:

- a) The General Division hearing process was not fair in some way.
- b) The General Division did not decide an issue that it should have decided. Or, it decided something it did not have the power to decide (error of jurisdiction).
- c) The General Division based its decision on an important error of fact.
- d) The General Division made an error of law when making its decision.¹

[11] The Courts have equated a reasonable chance of success to an "arguable case."²

Procedural Fairness

[12] The only ground of appeal that the Claimant selected in completing his Application to the Appeal Division was the ground of appeal concerned with procedural fairness.

[13] The Claimant disagrees with how the General Division evaluated the evidence and with the decision result. He states that he was not the only staff member who breached the employer's procedures and says that other staff were also responsible for

¹ This is a plain-language version of the grounds of appeal. The full text is in section 58(1) of the *Department of Employment and Social Development Act* (DESDA).

² See *Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41; and *Ingram v Canada (Attorney General)*, 2017 FC 259.

those breaches for which he was disciplined and dismissed. He does not believe that this is fair.

[14] However, there is no arguable case that the General Division acted in a way that was procedurally unfair.

[15] Procedural fairness is concerned with the fairness of the process. It is not concerned with whether a party feels that the decision result is fair.

[16] Parties before the General Division have a right to certain procedural protections such as the right to be heard and to know the case against them, and the right to an unbiased decision-maker.

[17] The Claimant did not say that the General Division did not give him a fair chance to present his case at his hearing, or to respond to the Commission's case. He has not complained that the General Division member was biased or that he had already prejudged the matter.

[18] When I read the decision and review the appeal record, I do not see that the General Division did anything, or failed to do anything, that causes me to question the fairness of the process.

Important error of fact

[19] The Claimant did not select the ground of appeal concerned with an error of fact in his Application. However, he did say that the General Division "ignored the fact" that he shared responsibility for the policy breaches with other staff. I will take this as an argument that the General Division made an important error of fact.

[20] The General Division makes an important error of fact when it **bases its decision** on a finding that ignores or misunderstands **relevant** evidence, or on a finding that does not follow rationally from the evidence.³

³ I have tried to make this error more understandable. This ground of appeal is defined in section 58(1)(c) of the DESDA: The General Division will have made an error of fact where it, "based its decision on an

[21] There is no arguable case that the General Division made an important error of fact.

[22] The General Division did not ignore the Claimant's evidence. It acknowledged the Claimant's evidence that other staff were on duty with him and could also have acted to prevent at least some of the breaches for which he was warned.⁴

[23] However, its decision was based on its finding that the Claimant's actions were misconduct, and that he was dismissed because of that misconduct. It had to determine whether the Claimant willfully or recklessly breached the employer's policy, and whether he should have known that dismissal was a real possibility.

[24] The General Division did not need to decide whether the Claimant's dismissal was fair or appropriate, as it noted. Other employees may also have breached the employer's policy, and the employer may not have treated its employees evenhandedly, but this was not relevant to the decision that the General Division had to make.

[25] The Claimant's appeal has no reasonable chance of success.

Conclusion

[26] I am refusing permission to appeal. This means that the appeal will not proceed.

Stephen Bergen
Member, Appeal Division

erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it."

⁴ See paras 30 and 45 of the General Division decision.