Citation: *DG v Canada Employment Insurance Commission*, 2025 SST 58

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	D. G.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated December 16, 2024 (GE-24-2668)

Tribunal member:	Glenn Betteridge
Decision date:	January 28, 2025
File number:	AD-25-38

Decision

[1] Leave (permission) to appeal is denied. The appeal won't go forward.

Overview

[2] D. G. is the Claimant. He was working for a branch of the Federal Government (employer) when the COVID pandemic hit Canada. His employer adopted a COVID vaccination policy (vaccination policy).

[3] The Claimant applied for a religious exemption (accommodation) under the vaccination policy. His employer denied his request. He didn't follow his employer's vaccination policy. So, his employer put him on leave without pay (LWOP) from February 14, 2022 until it lifted the vaccination policy (June 22, 2022).

[4] The Canada Employment Insurance Commission (Commission) decided the Claimant was disentitled from getting benefits during his LWOP. His LWOP counted as a suspension for misconduct under section 31 the *Employment Insurance Act* (EI Act).

[5] The General Division dismissed the Claimant's appeal. He appealed. The Appeal Division decided the General Division had used an unfair process. It sent his appeal back to the General Division to reconsider. The General Division reconsidered his appeal and dismissed it.

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

Issues

[7] I have to decide three issues:

- Is there an arguable case the General Division process or hearing was unfair to the Claimant?
- Is there an arguable case the General Division made a legal error by not explicitly and specifically considering his Charter arguments or his arguments based on the *Digest of Benefit Entitlement Principles* (Digest)?
- Is there an arguable case the General Division made an important error of fact when it decided his employer suspended him?

I am not giving the Claimant permission to appeal

[8] I read the Claimant's application to appeal.[1] I read the General Division decision. I reviewed the documents in both General Division files.[2] I didn't listen to the General Division hearings. His application didn't raise any issues that made me think I had to do that to make a justifiable, acceptable, and defensible decision.

[9] The Federal Courts have decided 26 misconduct cases involving an employee suspended or dismissed under their employer's COVID vaccination policy.[3] The law is clear. When an employee knew about—but didn't follow—their employer's vaccination policy, and knew the consequences (suspension or dismissal), this counts as misconduct under the EI Act.[4] And the employee can't get EI benefits.

[10] The General Division decided the Claimant knew about his employer's vaccination policy but didn't follow it. It decided he knew his employer would put him on

---

[1]. See ADN1.
[2]. See GD3, GD3, GD4, GD7, GD23 to GD29, and RGD10 to RGD13.
[3] The first decision was *Davidson v Canada (Attorney General)*, 2023 FC 1555. The most recent decision was *Daggett v Canada (Attorney General)*, 2025 FC 114.
[4] See the *Employment Insurance Act* (EI Act), sections 30(1) (lost employment) and 31 (suspension).

LWOP if he didn't. This is what happened. And this counted as misconduct under the EI Act.

[11] There was nothing unique about the Claimant's circumstances or arguments. This means the General Division had to follow the Federal Courts' decisions. That is what it did—and there isn't an arguable case it ignored or misunderstood any legally relevant issues, evidence, or arguments. And the Claimant hasn't shown it used an unfair process.

[12] So, for the following reasons, I am not giving the Claimant permission to appeal.

The test for getting permission to appeal

[13] I can give the Claimant permission to appeal if he shows an arguable case the General Division made one of these errors.[5]

- It used an unfair process or was biased.[6]
- It used its decision-making power improperly.
- It made an important factual error.
- It made a legal error.

[14] I have to start by considering the grounds of appeal the Claimant put in his application.[7]

[15] Making the Claimant's arguments fit into the four types of errors is challenging. There is a pattern. His written arguments identify a certain error using the name of the error from the application form. But he goes on to describe something that could count

[5] See section 58(2) of the *Department of Employment and Social Development Act* (DESD Act).
[6] These are the grounds of appeal in section 58(1) of the DESD Act. I call them errors. The Federal Court set out the "arguable case" test in cases like *Brown v Canada (Attorney General)*, 2024 FC 1544 at paragraph 41, citing *Osaj v Canada (Attorney General)*, 2016 FC 115 at paragraph 12.
[7] See *Twardowski v Canada (Attorney General)*, 2024 FC 1326 at paragraph 26.

as a different error. Or his reasons show he fundamentally disagrees with the General Division on a point, but don't point to any error.

[16] First, I will consider the Claimant's arguments about procedural fairness. Then I will consider his arguments about legal errors. Finally, I will consider arguments about important factual errors he says the General Division made.

The Claimant hasn't shown an arguable case the General Division process was unfair to him

[17] The Claimant checked the box that says the General Division didn't follow procedural fairness. The Claimant didn't raise any concerns with the fairness of the hearing. All his arguments refer to the General Division decision.

[18] The General Division makes an error if it uses an unfair process.[8] These are called procedural fairness or natural justice errors. The question is whether a person knew the case they had to meet, had a full and fair opportunity to present their case, and had an impartial decision-maker consider and decide their case.[9]

[19] I have reviewed the Claimant's arguments where he says the General Division made a procedural fairness error. None of these arguments are about procedural fairness—the fairness of the **process** the General Division used and its impartiality. His arguments are really about the **substance** of the General Division decision—not the process it used to make that decision.

[20] Sometimes when he uses procedural fairness, he goes on to describe something that might count as legal error or an important factual error. He disagrees with the evidence the General Division thought was relevant, how it weighed the relevant evidence, and its factual findings. He argues it was procedurally unfair for the General Division not to deal with certain arguments he made. Or the General Division's interpretation of misconduct is procedurally unfair. None of these are procedural

[8] This is a ground of appeal under section 58(1)(a) of the DESD Act.
[9] See *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69; and *Kuk v Canada (Attorney General)*, 2024 FCA 74.

fairness errors. I will consider some these alleged errors in other sections of this decision.

[21] But mostly, the Claimant writes "procedural fairness" to categorize the parts of the General Division decision he disagrees with. But simply disagreeing with the General Division's findings, or the outcome of the appeal, doesn't show an arguable case the General Division made an error.[10]

[22] So, the Claimant hasn't shown there is an arguable case the General Division process was unfair to him.

There isn't an arguable case the General Division made a legal error by not explicitly dealing with his Charter arguments and the Digest

[23] The General Division makes a legal error when it ignores an argument it has to consider, doesn't give adequate reasons for its decision, misinterprets the law, uses an incorrect legal test, or doesn't follow a court decision it has to follow.

[24] The Claimant argues the General Division made legal errors. (I will summarize and analyze his arguments below.)

[25] I disagree. He hasn't shown an arguable case the General Division made a legal error, and I didn't find an arguable case.

[26] The General Division didn't have to consider the specifics of his Charter arguments, or his arguments based on the Digest. The General Division used the correct legal test for misconduct and relied on recent COVID vaccine misconduct decisions from the Federal Courts. It had to follow those decisions. And its reasons for decision are adequate and intelligible given the facts and the law it had to consider when it decided the appeal.[11]

---

[10] See *Griffin* v *Canada (Attorney General)*, 2016 FC 874 at paragraph 20.
[11] See *Lalonde v Canada (Minister of Human Resources Development)*, 2002 FCA 211. See also *Sennikova v Canada (Attorney General)*, 2021 FC 982 at paragraphs 62 and 63, where the court says the Tribunal has to grapple with the right questions and its reason for decision must "add up."

– The General Division's reasons

[27] The General Division set out the correct legal test for misconduct under the EI Act, then correctly used that test (paragraphs 41 to 46). It cited and followed recent decisions from the Federal Courts applying the misconduct test in COVID vaccine misconduct cases (footnotes 1, 17, 15, 29, 32, 34, 38 and paragraph 62).

[28] The General Division summarized and relied on the Federal Courts' decisions to deal with many of the Claimant's arguments, including his human rights and Charter arguments:

> [46] I can only decide whether there was misconduct under the EI law. I can't make my decision based on whether the Appellant has other options under other laws. Issues about whether the Appellant's employer or union considers its actions of placing him on LWOP as being non-disciplinary, or not misconduct under any other context or definition, or whether the employer should have made reasonable arrangements (accommodations) for the Appellant, or claims about breaches of Human Rights or other laws, are not for me to decide. I can consider only one thing: whether what the Appellant failed to do is misconduct under the EI Act. [Emphasis added.]

[29] The General Division also relied on "the abundant and unanimous case law from the Federal Court of Appeal and Federal Court maintaining findings of misconduct in cases where a claimant fails to comply with the employer's COVID-19 vaccination policy" (paragraph 62).

[30] For the following reasons, there isn't an arguable case the General Division made a legal error when it relied on these summary statements rather than dealing specifically and explicitly with the Claimant's Charter and Digest arguments.

– The Claimant's Charter arguments

[31] The General Division didn't refer directly to the Claimant's Charter arguments or the Charter decisions he relied on. But it didn't have to do that. Instead, the General Division had to use the legal test for misconduct, following the Federal Courts' recent decisions in COVID vaccine misconduct cases. And that's what it did.

[32] I reviewed the Charter arguments the Claimant made at the General Division and the sources he relied on.

- The Claimant argued he has a right to freedom of religion under the Charter. According to the Supreme Court of Canada's *Amselem* decision, he gets to work out for himself his religious obligations. And freedom of religion includes the right to manifest his religious beliefs without fear of hindrance or reprisal.

- He argued the Human Rights Act and the Charter bind his employer because it's part of the Federal Government.[12] He says his contract of employment and collective agreement don't let his employer violate his human or Charter rights.

- He argued the Commission's misconduct decision was a violation of his human and Charter rights.[13] And a "clear violation of religious freedom laws in Canada."[14] He says the Commission should have taken into account his right to freedom of religion when deciding whether his refusal to get vaccinated was misconduct.[15] Instead, it used a one-size-fits-all blanket template that didn't account for his sincerely held religious beliefs. He says the Commission didn't consider his religious accommodation request.[16] He says the Commission's decision conflicts with his Charter rights and the Commission should have considered that.

- He relied on a legal opinion that argues, "section 7 of the Charter requires government to respect employees' rights to bodily autonomy, including the right to receive—or not receive—particular medical interventions, such as Covid-19 vaccines."[17] The opinion concludes that the Commission has no

[12] See GD26-27
[13] See GD26-36 and GD29-9.
[14] See GD29-9.
[15] See GD2-20 and GD2-21. See also GD3-102
[16] See GD2-31. See also GD26-30.
[17] See GD3-105, quoting from a legal opinion by the Justice Centre for Constitutional Rights and Freedoms.

legal jurisdiction to deny EI benefits to Canadians who didn't receive COVID vaccines.[18]

- He relied on a decision by the Military Grievances External Review Committee.[19] The Committee found provisions of the Canadian Armed Forces' vaccination policy infringed service members' rights to liberty and security of the person under section 7 of the Charter. And section 1 of the Charter didn't save these violations. So, the Committee decided the vaccination policy was invalid.

- Finally, he argues:

> … if the SST is to find that my actions do amount to misconduct, I respectfully ask that they consider the sacred obligation and duty I have to uphold my religious beliefs and Charter rights. Furthermore, I submit that one cannot try and argue that I chose to hold uphold my religious beliefs or Charter rights. God called me to my religious beliefs, and I was born with my Charter rights.[20]

[33] The Claimant's arguments show me he used the Charter to make three types of challenges at the General Division:

- Using the Charter to **challenge his employer's policy and actions**.

- Using the Charter to **challenge the Commission's decision** to deny him benefits under section 31 of the EI Act because his non-compliance with his employer's vaccination policy counts as misconduct.

- Arguing the General Division had to **interpret misconduct under the EI Act consistent with Charter values** of freedom of religion, liberty, autonomy, and security of the person.

---

[18] See GD3-106.
[19] See GD24-37 to GD24-91.
[20] See GD26-33.

[34] The General Division didn't have to deal directly or explicitly with the Claimant's three Charter challenges.

- The Federal Courts have said **Charter challenges to an employer's policy and actions** fall outside the Tribunal's narrow, limited role in CVOID vaccination misconduct appeals.[21] These decisions point out employees have other legal options to challenge their employers' decisions. In this case, the Claimant had already filed a grievance against his employer under the collective agreement.[22]

- The Claimant didn't follow the proper legal procedure to bring a **Charter challenge of the Commission's decision** to deny him benefits. Section 1 of the *Social Security Tribunal Regulations, 2022* says a person who wants "to challenge the constitutional validity, applicability or operability" of the EI Act has to file a constitutional question notice with the Tribunal. The Claimant didn't do that. So, the General Division didn't have the legal power (jurisdiction) to consider his Charter challenge.

- The Federal Courts have rejected the argument the Tribunal had to consider **Charter values** when it interprets and applies the misconduct sections of the EI Act. These decisions give robust reasons why the Tribunal should not consider Charter values in COVID vaccine misconduct cases.[23] Here are the key paragraphs from the Federal Court of Appeal's decision in *Sullivan*, which was a case where it asked the parties for submissions on the Charter values issue:

> [6] We would add that the court jurisprudence makes sense. Were the applicant's submissions to be upheld, the Social Security Tribunal would become a forum to question employer policies and the validity of

[21] See for example *Brown v Canada (Attorney General)*, 2024 FC 1544 at paragraphs 65, 81, and 84 to 89; and *Cecchetto v Canada (Attorney General)*, 2023 FC 102 at paragraphs 46 to 49.
[22] See his employer's reply at GD27-2 and GD27-3.
[23] See for examples of decisions where the Federal Courts rejected Charter values arguments: *Sullivan v Canada (Attorney General)*, 2024 FCA 7*; Khodykin v Canada (Attorney General)*, 2024 FCA 96; *Murphy v Canada (PG*), 2024 CF 1356; *Boskovic v Canada (Attorney General)*, 2024 FC 841; and *Sturgeon v Canada (Attorney General)*, 2024 FC 1888; and *Francis v Canada (Attorney General)*, 2023 FCA 217.

> employment dismissals. Under any plausible reading of the legislation that governs the Tribunal, it is a forum to determine entitlement to social security benefits, not a forum to adjudicate allegations of wrongful dismissal. We note that the applicant in fact has pursued remedies elsewhere for wrongful dismissal and has made a human rights complaint.
>
> [12] It is worth adding that under *Commission scolaire*, Charter values cannot be used to invalidate legislative provisions that administrative decision-makers must follow, such as in this case, section 30 of the *Employment Insurance Act*. Only unjustified violations of rights and freedoms can strike down legislation. Here, as we have said, the Social Security Tribunal was reasonable in holding that the applicant was precluded under that section and related court jurisprudence from questioning the appropriateness of the termination of his employment. [Emphasis added.]

– **Summary of Charter analysis**

[35] I appreciate that the Claimant has deeply held religious beliefs, which dictate his world view and conduct. And I appreciate he believes his Charter arguments are weighty and believes his decision not to get vaccinated is protected by the Charter. I also appreciate his position that someone making a decision about the legality of his suspension needs to deal with the merits of those arguments.

[36] But the General Division could not consider the legality of his suspension. And it didn't have to grapple with his Charter arguments in any detail. The Tribunal and the Federal Courts have decided a significant number of COVID vaccine misconduct cases. The Tribunal—and the Federal Courts reviewing the Tribunal's decisions—have never used the Charter to decide there was no misconduct when a person refused to follow their employer's COVID vaccination policy.

[37] So, given the facts in the Claimant's appeal, the law of misconduct under the EI Act, and the limits on the General Division's power to decide constitutional issues, there isn't an arguable case the General Division made an error when it didn't specifically and explicitly consider his Charter arguments.

– The Claimant's Digest argument

[38] The Claimant argued the General Division made a procedural fairness error when it didn't consider his argument based on Chapter 6 of the Digest.[24] He says that according to the Digest and his collective agreement, his employer should have afforded him the opportunity to leave voluntarily or quit. The General Division should have considered the Commission's failure to consider section 6.8.3.

[39] It seems to me the Claimant is arguing the General Division made a legal error—it didn't consider a legal argument he made or didn't follow a legal source it should have followed.

[40] There isn't an arguable case the General Division made a legal error when it didn't consider the Digest nor the Claimant's argument based on the Digest, for three reasons.

[41] First, the Digest is a non-binding guidance document, and it cannot have the effect of overriding the wording of the EI Act as interpreted by binding case law.[25] The General Division had to consider and decide the Claimant's case based on the binding COVID vaccine misconduct decisions of the Federal Courts. And that's what it did.

[42] Second, the Federal Courts have said the misconduct analysis focuses on the employee's behaviour, not the employer's behaviour. The Claimant's argument asks the General Division to find his employer's conduct was wrong. His employer put him on a LWOP. He says he should have had the choice to take a voluntary leave. (He also argues that his leave was voluntary and disputed the General Division's findings of fact about this.) The General Division could not decide the Claimant's appeal based on his employer's conduct. He has field a grievance about tis issue under his collective agreement.

---

[24] See ADN1-7, ADN1-8, and ADN1-9
[25] See *Sennikova v Canada (Attorney General)*, 2021 FCA 148 at paragraph 60; quoting *Canada (Attorney General) v Greey*, 2009 FCA 296 at paragraph 28.

[43] Third, the Commission denied him benefits under section 31 of the EI Act because his employer suspended him for misconduct. Chapter 6 is about voluntary leaving without just cause, under section 29(c) of the EI Act. In other words, it wasn't relevant to the legal issue the General Division had to decide in the Claimant's appeal.

[44] For these reasons, the General Division didn't have to consider Chapter 6 of the Digest, or his arguments based on it. So, there isn't an arguable case the General Division made a legal error when it didn't consider the Digest or his arguments.

The Claimant hasn't shown an arguable case the General Division made an important factual error when it found his employer suspended him

[45] The Claimant checked the box that says the General Division made an important error of fact. He says the General Division made five errors with the facts.

[46] 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.[26] In other words, some evidence goes squarely against or doesn't support a factual finding the General Division made to reach its decision.

[47] The Claimant's position is he voluntarily took a LWOP. He disagrees with the General Division's finding about the reason he left his job. It decided his employer placed him on an involuntary LWOP, which is a suspension under the EI Act, because he didn't follow its vaccination policy (paragraphs 36 and 40).

[48] He makes three arguments about the General Division's factual errors that lead to its suspension finding:

[26] Section 58(1)(c) of the DESD Act says it's 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.

- It wasn't accurate for the General Division to state the documents on file show it was the employer who put the Claimant on LWOP.[27]

- Fairly weighing and adjudicating the evidence should lead the decision-maker to conclude the LWOP under Article 52 of his collective agreement is a voluntary leave.[28]

- The General Division was wrong to say his employment suspended him February 11, 2022—he says he left the workplace February 8, 2022 on an employer approved LWOP under the collective agreement.

[49] It's the General Division's job to review and weigh the evidence.[29] It carefully reviewed and weighed the evidence about the reason the Claimant lost his job (paragraphs 33 to 39). And the Claimant hasn't shown the General Division ignored or misunderstood any relevant evidence.

[50] His arguments show me he wanted the General Division to make a factual finding about his actions by following his interpretation of his collective agreement. The General Division didn't have to interpret and apply his collective agreement to make a finding about the reason he lost his job.

[51] The Claimant makes two other important factual error arguments:

- "The General Division didn't properly weigh the fact that I sought accommodation based on religious and conscientious objection to the policy."[30]

- The General Division failed to weigh and adjudicate fairly the fact that the COVID policy references the *Canada Labour Code* (CLC), which upholds his right to be governed by the collective agreement.[31]

---

[27] See ADN1-12.
[28] See ADN1-7.
[29] See *Tracey v Canada (Attorney General)*, 2015 FC 1300 at paragraph 33.
[30] See ADN1-8.
[31] See ADN1-8.

[52] I can't accept his arguments for three reasons.

[53] First, I can't interfere with the weight the General Division gave to the evidence unless he can show it ignored or misunderstood some relevant evidence. The General Division considered his evidence about his accommodation request (paragraphs 36, 38, 45, 46, and 50). It considered that the vaccination policy said "unwilling to be fully vaccinated" included where an accommodation is not granted and the employee refuses to be vaccinated (paragraph 39). The General Division didn't ignore or misunderstand this evidence about accommodation.

[54] Second, the fact the Claimant sought an accommodation wasn't legally relevant to the misconduct legal test. What was relevant was that his employer refused his accommodation request before the deadline for him to comply with the vaccination policy. And he knew this. The General Division didn't ignore or misunderstand the evidence about these two things.

[55] Third, the CLC and his collective agreement weren't relevant to the reason he lost his job or whether it counted as misconduct under the EI Act. So, the General Division didn't have to interpret and apply these sources to make a factual finding about the reason he wasn't working. Or to make a mixed factual and legal finding about whether his refusal to comply with the vaccination policy counted as misconduct.

[56] So, the Claimant 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

[57] The Claimant is representing himself. So, I looked beyond the arguments he made in his application to see whether there was an arguable case the General Division made an error. [32]

[32] 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 J*oseph v Canada (Attorney General)*, 2017 FC 391.

[58] I reviewed the documents (evidence, arguments, and decisions) that were in front of the General Division and the Appeal Division. I didn't find an arguable case the General Division made an error the law lets me consider.

Conclusion

[59] The Claimant hasn't shown an arguable case the General Division made an error. And I didn't find an arguable case. In other words, his appeal doesn't have a reasonable chance of success.

[60] This means I can't give him permission to appeal. And the General Division decision stands unchanged.

Glenn Betteridge
Member, Appeal Division