Citation: *DK v Canada Employment Insurance Commission*, 2025 SST 172

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

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

Decision under appeal:	General Division decision dated January 8, 2025 (GE-24-3601)

Tribunal member:	Stephen Bergen
Decision date:	**February 27, 2025**
File number:	AD-25-96

Decision

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

Overview

[2] D. K. 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 quit his job and applied for EI benefits. The Respondent found that he voluntarily left his job without just cause, so it could not pay him benefits. The Claimant felt that he did have just cause for leaving and he asked the Commission to reconsider. The Commission would not change its decision.

[4] The Claimant appealed to the General Division of the Social Security Tribunal, but the General Division dismissed his claim. Now he is asking the Appeal Division for permission to appeal.

[5] I am refusing permission to appeal. The Claimant has not made out an arguable case that the General Division acted unfairly, made an error of law, or made an important error of fact.

Issues

[6] Is there an arguable case that the General Division acted unfairly by

- Accepting the appropriateness and sufficiency of the Commission's investigation?
- Not seeking additional evidence?
- Showing bias by preferring the employer's evidence without explanation?
- Showing bias by prejudging the significance of the Claimant's safety concerns?
- Showing bias by dismissing the importance of professional engineering duties and ethical obligations?

[7] Is there an arguable case that the General Division made an error of law by

- Misapplying case law?
- Failing to consider that a breach of the EGBC Code of Ethics was unlawful?
- Failing to apply other laws to determine legal transgressions?

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

- Mistaking the status of the employer's Human Resources (HR) department or representative?
- Mistaking the number of engineers in the Vancouver office?
- Stating that the Claimant had not clearly identified the two job description documents?
- Misunderstanding evidence of how job duties changed?
- Misunderstanding the meaning of "vetting" or importance of personal protective equipment?
- Misunderstanding the Claimant's actions in response to his concern about the fire alarm?
- Ignoring the effect of work demands on the Claimant's ability to take a vacation?
- Ignoring pay stub evidence of missed vacation days?
- Ignoring evidence of a toxic workplace?
- Ignoring evidence that the Claimant's dismissal was imminent?

I am not giving the Claimant permission to appeal

[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." The grounds of appeal identify the kinds of errors that I can consider.

[10] 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] 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. Other court decisions have equated a reasonable chance of success to an "arguable case."[2]

[12] The Claimant selected every ground of appeal, except jurisdictional error. I will review these in turn.

Procedural fairness

[13] There is no arguable case that the General Division made an error of procedural fairness.

[14] 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. This is what is meant by "procedural fairness."

– Procedural fairness is concerned only with the General Division process

[15] The Appeal Division has jurisdiction to consider only errors made by the General Division. Some of what the Claimant is arguing suggests that he believes the **Commission's** investigation and decision-making process was unfair.

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[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.

[16] The Claimant may feel that the Commission's process was unfair, but the Appeal Division can only consider whether the **General Division** acted unfairly. The Appeal Division does not exercise oversight over the manner in which the Commission administers the *Employment Insurance Act* (EI Act).

– **Fairness does not include a duty to investigate**

[17] The General Division hearing process is not an inquiry. The General Division is an adjudicative body which makes decisions based on the evidence that is before it. Parties before the General Division are responsible for submitting or presenting the evidence which they believe will support their position on appeal.

[18] The General Division has the authority under the *Social Security Rules of Procedure* (Rules) to ask the Commission to investigate and report on any question related to a claim for benefits.[3] However, that power is discretionary, which means that the General Division cannot be compelled to ask questions of the Commission. The Supreme Court of Canada has confirmed that tribunals control their own procedures as "masters in their own house."[4] The General Division may govern the appeal process as it sees fit, so long as it is lawful and fair to the parties.

[19] The General Division is required to weigh the evidence before it and to draw necessary inferences or conclusions of fact. However, it has no duty or "due diligence" requirement to seek additional evidence. It was not obligated to "verify" whether the employer had a dedicated HR representative, or to seek corroboration for statements from the employer or corroborate any other evidence.

– **Bias**

[20] The Claimant argues that the General Division member was biased.

[21] Bias is a serious allegation. The courts have consistently held that a party must object to perceived procedural unfairness at the earliest opportunity. The failure to do so implies a waiver of the right to appeal such unfairness later. The Federal Court of

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[3] See section 53 of the Rules.
[4] See *Prassad* v *Canada (Minister of Employment and Immigration)*, 1989 CanLII 131 (SCC).

Appeal has said, “A party who believes that the presiding judge has created a reasonable apprehension of bias must make that position known at the first opportunity. One cannot secretly nurse a reasonable apprehension of bias for the purpose of raising it in the event of an adverse result.”[5]

[22] Since the Claimant did not raise a concern with bias until after the decision, I presume that he has no other basis for concern outside the actual decision and reasons.

[23] A “biased” mind is a closed mind, one that is resistant to reason and evidence. The threshold for a finding of bias is high, and the onus of establishing bias lies with the party alleging its existence. The Supreme Court of Canada has stated that the test for bias is: “What would an informed person, viewing the matter realistically and practically and having thought the matter through conclude?”[6]

[24] There is no arguable case that the General Division member was biased.

[25] The Claimant argues that the General Division failed to assess credibility fairly because it accepted that what the employer said was credible without verifying or scrutinizing contested facts. He points to his own evidence of the “true structure of HR” at his employer, and to the difference between his evidence and what his manager said about the total number of engineers in the Vancouver office.

[26] The General Division’s decision that the Claimant had reasonable alternatives was based (in part) on its finding that he could have spoken to his employer about his concerns. This finding relied on the fact that the Claimant had made no attempt to resolve his grievances with anyone at the employer. It did not accept or rely on the HR status of anyone, or their qualifications or independence. Even if the employer’s internal structure of HR responsibilities had been relevant to its decision, the General Division had no duty to investigate or verify this evidence. That it did not do so is not evidence of bias.

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[5] See *Bassila v Canada (Attorney General)* 2003 FCA 276.
[6] See *Committee for Justice and Liberty* v *Canada (National Energy Board)* 1976 2 (SCC), 1978 1 SCR.

[27] The General Division's finding that there had not been a significant change in the Claimant's work duties relied on how he had performed non-engineering duties since he started. Its finding did not depend on evidence of the number of engineers in the Vancouver office. It did not prefer the employer's evidence that there were three engineers in the Vancouver office over the Claimant's evidence that there were only two. In fact, it did not make a finding about how many engineers were in the office.

[28] The Claimant also argues that the General Division acted unfairly by dismissing his safety concerns "outright," which seems to be an argument that the General Division had prejudged the significance of his safety concerns and was not open to his evidence.

[29] The General Division decision did not dismiss outright the Claimant's safety concerns. It specifically considered whether dangerous working conditions were a factor affecting his reasonable alternatives to leaving. It engaged with the Claimant's evidence of safety concerns.[7]

[30] Finally, the Claimant argues that the General Division dismissed the importance of professional engineering duties and ethical obligations.

[31] The General Division discussed the Claimant's concerns about his professional responsibilities and ethics in some detail.[8] When the Claimant says that the General Division "dismissed" its importance, he is actually disputing the manner in which the General Division evaluated the evidence.

[32] However, it is the General Division's job to weigh the evidence and make findings of fact and apply the law. The Claimant may feel that the General Division did not attach *sufficient importance* to evidence that he had safety or professional/ethical concerns. But this does not mean that the Claimant did not have a fair opportunity to make his case, or that the General Division member closed her mind to any of the evidence.

[33] I appreciate that the Claimant disagrees with the General Division's findings and with its decision, so he may feel the decision treats him unfairly. But procedural fairness

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[7] See para 33–43 of the General Division decision.
[8] See para 44–50 of the General Division decision.

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

[34] 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.

Error of law

– Misapplication of case law

[35] The Claimant argues that the General Division made an error of law in how it applied the case law.

[36] The General Division cited a decision of the Federal court of Appeal, and some decisions of the Umpire.[9] It cited these decisions because they supported the principle that, "a claimant who is aware of the existence of the conditions required for employment when he accepts a job cannot later claim that these conditions are just cause for leaving that employment."

[37] The Claimant says that the General Division should not have applied those case authorities because his original job description did not contain many of the duties he was required to perform, and because his duties changed over time as his role as an engineer was "progressively undermined."[10] He says those additional or enlarged duties were not "conditions required for employment."

[38] There is no arguable case that the General Division made an error of law.

[39] The General Division cited case law that was **applicable to the facts as it found them**. It had found that the Claimant knew from the start that his duties would include more than engineering duties. It found that he had accepted additional (non-engineering) roles after he began working. The General Division also found that the

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[9] See para 32 of the General Division decision. Note: the "Umpire" is the final level of appeal under the former employment insurance administrative appeal scheme. Decisions of the Umpire are not binding on the Social Security Tribunal.
[10] See AD1-16.

Claimant expected that his role would evolve to permit him to focus on engineering tasks.[11]

[40] There is no arguable case that the General Division made an error of law in its use of the case law. It applied case law that was appropriate to its findings of fact. I will consider whether the General Division made errors in its findings of fact in a later section of the decision.

– **Unlawful practices of employer**

[41] The Claimant maintains that his employer's unlawful practices were a factor in his decision to leave.

[42] He argues that the General Division made an error of law because it did not accept that a violation of the Engineers and Geoscientists of British Columbia (EGBC) Code of Ethics by a "registrant" is also a violation of law. The Claimant asserts that the General Division should have accepted that his employer's breaches of the Code of Ethics were practices contrary to law.

[43] There is no arguable case that the General Division made an error of law.

[44] The Claimant highlighted two provisions of the EGBC for the General Division, which he believed the employer violated. One of these provisions states that registrants must practise "only in the fields in which they are competent."

[45] The second provision speaks of a registrant's duty to conduct themselves in a manner that is "fair, courteous, and in good faith, and to provide honest and fair professional comment."[12]

[46] In his argument to the Appeal Division, the Claimant reframes how the employer breached the Code of Ethics. In addition to his assertion that the employer undermined

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[11] See paras 29 and 30 of the General Division decision.
[12] See GD7-3. But see also GD2-20, where the Claimant's Continuing Education Plan indicates an intention to take further in-depth training of HVAC control systems, but it also identifies his current area of practice was HVAC/building Systems and Controls and states his intention to continue to practice in that area.

his professional judgment and ignored his concerns, he says that it failed to provide or support professional training, disregarded ethical obligations to employees and clients, and failed to prioritize safety.[13]

[47] Many of the findings of fact required to determine whether the Claimant's employer violated the EGBC Code of Ethics, or otherwise violated the law, are outside the area of the General Division's area of expertise. It would have had to approach such issues extremely carefully.[14]

[48] The Claimant stated that his employer required him to "handle" controls-related issues and that he was not qualified (or competent) to work in controls engineering.[15] To evaluate whether the employer breached its ethical obligations or caused the Claimant to do so, the General Division would have needed evidence of the actual bounds of the Claimant's professional competence, and specific evidence that he was required to work out of bounds.

[49] To determine whether the Claimant's employer was not sufficiently deferential to his professional judgment, or that it did not adequately support the appropriate training, the General Division would have needed some kind of standard by which it could evaluate these claims.

[50] Likewise with the other concerns of the Claimant. The General Division could not decide that the employer was acting unethically based solely on the Claimant's assertion that the fire alarm was not "loud enough," or his assertion that the employer's technicians were not "properly vetted," or his opinion that the employer "should have" rented a scissor lift on a particular occasion.[16]

[51] The Claimant argues that the General Division failed to appreciate that a violation of the EGBC Code of Ethics is an unlawful act.

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[13] See AD1-27.
[14] See *R. Consolidated Bathurst Packaging Ltd*., [1990] 1 SCR 282.
[15] See GD2-52.
[16] See AD1-27.

[52] I note that the *Professional Governance* Act (PGA) requires registrants only to have "regard to" guidelines. The guidelines are said to include the EGBC Code of Ethics.[17]

[53] The Claimant has not pointed to any statutory or regulatory provision, or any court or tribunal decision, which stipulates that registrants may be guilty of an offence or subject to administrative penalties for having violated the EGBC Code of Ethics. He did not describe the legal test for any such offence or violation or show how the employer's actions satisfy any such test.

[54] Like the General Division member, I am not an expert in professional misconduct issues. I expect that there are circumstances in which a breach of the Code of Ethics would cross over into illegality. For example, I expect it would be illegal for a registrant employer to insist its employees utilize unsafe work practices or work in unsafe conditions. However, the illegality in such a case would not flow from the violation of the Code of Ethics, but because the ethical lapse also violated some other provision of the PGA or other statutes or regulations.

[55] The Claimant provided no evidence that the employer was investigated or charged for any of its actions. There was no evidence of any judicial determination (or determination of a disciplinary committee of the EGBC or any other tribunal), that the employer's actions were contrary to law or that the employer required the Claimant to act illegally.

[56] There is no arguable case that the General Division made an error of law by failing to view as unlawful the Code of Ethics breaches identified by the Claimant. The Claimant's mere assertion of their illegality does not establish that the employer's actions were illegal.

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[17] See section 9 of the PGA.

– Other laws

[57] The Claimant also argues that the General Division misinterpreted the nature of a professional engineer's duties and that it implied that job descriptions do not matter. He argues that the General Division failed to appreciate the significance of employment contracts and of workplace safety regulations.[18] It is not clear whether the Claimant thinks that this is an error of fact or of law.

[58] In either case, the General Division was not required to define the scope of practice of an engineer or to parse the Claimant's engineering duties from the non-engineering duties expected of him. The General Division did not say or imply that job descriptions "do not matter." It stated only that it "was clear" (from the two job descriptions) that the Claimant's position required more than mechanical engineering duties, "regardless of which job description was from 2016." (In other words, regardless of which of the descriptions better captured the anticipated duties when the Claimant was first hired to the position.)

[59] There is no arguable case that the General Division made an error of law in how it interpreted the Claimant's contract or applied employment law.

[60] When contrasted with his most recent duties and responsibilities, the terms of the Claimant's original contract could be relevant to whether the Claimant's employment had changed in the way that he asserts.[19] However, contract law is not the General Division's expertise. It had no obligation to interpret or determine the parties' contractual obligations, and it was not authorized to adjudicate any dispute between the Claimant, as an employee, and his employer. "Employment law," such as employment standards legislation, would only be relevant to the extent that the Claimant had established that the employer was in contravention of the law, such as where it refused to pay overtime when required by statute. There was no evidence that the employer had unlawfully violated any statutory provision governing its relationship with its employees.

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[18] See AD1-30.
[19] His contract was not actually in evidence. Only the Claimant's letter of offer was in evidence.

[61] So far as the significance of workplace safety regulations, I have already discussed how the Claimant has not provided evidence of illegality, such as evidence that workplace safety regulations were breached. As I explained, the Claimant's assertion that some action is illegal is not evidence that the action is illegal.

[62] There is no arguable case that the General Division made an error of law concerning safety regulations.

[63] The General Division was required to look at all the evidence through the lens of the legal test for "just cause" found in the EI Act. As the General Division explained in the hearing, and in its decision, a claimant will only have "just cause for leaving" when they have no reasonable alternative to leaving.

[64] The Claimant believes that he was being asked to do tasks and take on roles that were neither appropriate for a professional engineer, nor consistent with his employment contract. He believes that some of the employer's actions were unethical or required him to act unethically. He also feels that the employer did not share his commitment to safety. Based on these and other concerns, he may feel that he had good reasons for leaving or feel that it was not reasonable to expect him to stay.

[65] However, the Claimant needed to show that he had exhausted all the reasonable alternatives to leaving. The laws and guidelines associated with the Claimant's professional status or with governing the ethical and professional responsibilities that attach to that status could only be relevant insofar as they could help him establish that he had no reasonable alternatives to leaving. The same is true of the terms of his employment contract, and of applicable safety or employment regulatory regimes.

[66] The Claimant has not made out an arguable case that the General Division applied, misapplied, or refused to apply, any law that had a bearing, or could have any bearing, on the reasonable alternatives that it identified.

Important error of fact

[67] The General Division makes an important error of fact only 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.[20]

[68] This means that the Claimant must show that there is an arguable case that the General Division made an error of fact that was **relevant to the findings on which the decision was based**.

[69] The Claimant could not succeed in his appeal to the General Division by demonstrating only that his employment-related grievances were reasonable, or by showing that it was reasonable for him to leave. To prove that he had just cause for leaving, the Claimant needed to show that he had no reasonable **alternative** to leaving. As I have tried to emphasize, this is the legal test for just cause.

[70] I cannot allow the Claimant's appeal to proceed on the basis that the General Division may have made just any error of fact. I must find that the General Division made an error of fact that may have influenced its decision that the Claimant had reasonable alternatives to leaving when he resigned.

[71] The General Division found that there were several reasonable alternatives to leaving that were available to the Claimant at the time. It stated that the Claimant could have raised his workload concerns with management. It said that he could have taken his upcoming vacation and considered his position. He could also have asked for a medical leave of absence to address his experience of stress and burnout. Finally, he could have made efforts to obtain an alternate job before leaving while he was still employed.

[72] To have a reasonable chance of success in his appeal, the Claimant would need to identify an arguable case that the General Division made an error or errors of fact

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

that, if understood correctly, would mean that none of these alternatives were reasonable.

– **Evidence related to discussing concerns with management**

HR representation

[73] The Claimant argues that the General Division failed to consider that the employer did not have an HR department or representative. He claims the employer's accountant, "GS," was not a dedicated HR professional, and that the General Division did not recognize this.[21]

[74] In fact, the General Division acknowledged the Claimant's evidence that GS did not have an HR role, and that the employer did not have an "independent HR department." It observed that the Commission's notes imply that the Commission officer, who spoke with GS, understood GS to have some HR connection or function. However, the General Division also clarified that the employer had not suggested that GS was an HR specialist.[22]

[75] The General Division did not find that GS worked in HR, or that the employer had an HR department. Instead, it found that GS's classification was not relevant. It ultimately found that the Claimant should have made an effort to raise his complaints with either his direct manager or a more senior manager. [23]

[76] I understand that the Claimant may have been more comfortable with raising his concerns by some formal HR process, and he may have felt that he would only aggravate his working environment by raising his concerns with his manager or the senior management. However, that does not mean he could not have tried to discuss his concerns with his management before quitting. The availability of a dedicated independent HR department was not relevant to whether discussing his concerns was a reasonable alternative.

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[21] See AD1-8 to AD1-11.
[22] See para 20 of the General Division decision.
[23] See paras 83, 84 of the General Division decision.

[77] There is no arguable case that the General Division made an error of fact by failing to consider evidence that GS was not the employer's HR representative.

– **Evidence related to workload and changes in duties**

Two vs three engineers in Vancouver

[78] The Claimant's manager told the Commission that there were five employees in the Vancouver office at the time the Claimant quit, including another mechanical engineer that did exactly what [he and the Claimant] did.[24] There is a conflict of evidence on this point. The Claimant testified to the General Division that he and his manager were the only engineers in the Vancouver office.[25]

[79] The General Division did not reconcile the conflict in the evidence. Even though the General Division is not obliged to "verify" evidence, it is generally required to reconcile contradictory evidence that is relevant to key findings.

[80] However, there is no arguable case that the General Division made an error of fact by failing to reconcile this particular contradiction.

[81] I say this for several reasons. First, the General Division referred only to the Claimant's version.[26] If the Claimant preferred one version over the other, it appears to have preferred the Claimant's version. If this is correct, the General Division's failure to resolve the contradiction did not prejudice the Claimant.

[82] Second, the number of engineers in the Vancouver office does not explain anything about the Claimant's workload. It has no probative value (of value to establish an important fact) without an associated measurement of the total workload for the Vancouver office, such as the total hours of work demanded.

[83] Third, fewer engineers would mean more "engineering" work for each of the engineers (assuming the total engineering work stayed the same or increased).

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[24] See GD3-45.
[25] Listen to the audio recording of the General Division hearing at timestamp: 1:45:20.
[26] See para 30 of the General Division.

However, it could not support the Claimant's argument that the non-engineering work was, or had become, an unacceptable proportion of his total workload.

[84] Fourth, and most importantly, the General Division did not need to determine how many engineers shared the engineering work in the Vancouver office because it is not relevant to the reasonable alternative identified by the General Division. The number of engineers may have impacted the Claimant's workload and may have affected his health or his ability to take vacation. However, it did not affect his ability to discuss those workload concerns with his management or begin a search for another job.

Statement about job descriptions

[85] There were two job descriptions or "position summaries" in evidence. The Claimant says that both were for the position he resigned. One of them was apparently in effect at the time that he was hired, and the other one was a revised version that was used to hire his replacement.

[86] The Claimant says that he differentiated between the two job descriptions, and that the General Division made an error in saying that the Claimant had not said, "which was which." He asserts that this error directly affected the General Division's conclusion.

[87] There is no arguable case that the General Division made an error of fact when it said that the Claimant did not specify which description was which.

[88] As the Claimant admits, he identified the two documents through the names he assigned to the .pdf files that were attached to his submission to the General Division. The Claimant believes that this was sufficient to specify, "which was which."

[89] The Claimant's submission was supplied by email. The list of attachments is just below the subject line of the email. There were thirty-one individual ".pdf" document files attached. Those files were opened by the Tribunal registry when the email was received, and their full-form contents were associated with the email in no particular order.

[90] Now that the Claimant has raised the issue, I see that the two "position summary" descriptions are likely those documents whose files were attached as "X (new hire).pdf," and "Energy Application Engineer—Vancouver2016.pdf," respectively.[27] Neither of these files includes any date or other identifier on the face of the actual full-form document.

[91] I believe the Claimant is asking me to find that the General Division made an error of fact because

- It did not notice or appreciate that his original position summary was associated with the .pdf file with Vancouver2016 in its name or that the most recent position summary was associated with the .pdf with "(new hire)" in its name.
- It did not infer that the "2016" part of the .pdf file name was a date and that it was the date (or a date) on which the position summary was effective.
- It did not further infer from the 2016 date, that it was the job description that was in effect at the time he was hired.
- It did not infer that "new hire" meant that the summary was developed to hire his replacement, as opposed to the job description used for any new hire at any time.

[92] It might have been reasonable for the General Division to make all of these inferences, but I do not think that they are all necessary inferences. Nothing on the face of the actual uploaded documents identified which job description was which. The Claimant did not distinguish between the two documents in his testimony. The General Division's statement that the Claimant did "not specify which is which" was not an unfair or inaccurate statement.

[93] Even if the General Division ought to have understood "which was which," from the naming of the .pdf documents, there is no arguable case that this was an error because it was of no significance to the decision. The General Division's conclusion that the Claimant's position required more than just engineering duties did not depend on which of the two position summaries was the original one. It said that the Claimant's position required more than just mechanical engineering duties, "**regardless** of which

[27] See GD2-1 subject heading, and also found at GD2-11 and GD2-26.

job description was from 2016." It also said that **both** job descriptions clearly state that the position requires him to act as project manager and site supervisor.[28]

Evidence of changes in the Claimant's job duties since 2016

[94] The Claimant disagrees with the General Division's conclusion that his job duties had not changed significantly from the time he started. He argues that the General Division ignored the historical context, which was that he had only accepted multiple roles (and non-engineering tasks) early in his employment to help facilitate the growth of the company. He also argues that he was increasingly assigned non-engineering tasks, despite his stated concerns. The Claimant points to his 2023–2024 Continuing Education plan in which he stated that his expectation was to "be assigned more specific segmented tasks and responsibilities in engineering."

[95] The General Division found that the Claimant had always been required to do non-engineering tasks, and that this aspect of his job had not changed. It also found that the Claimant had an expectation that he be allowed to concentrate on engineering-related work, and that the employer's failure to meet that expectation was significant to his decision to leave.

[96] These findings were justifiable. The General Division considered what the Claimant's submissions said about how he accepted additional roles after he was hired, and also considered his testimony that he was dissatisfied because he had expected his job duties to change, but they did not.[29]

[97] However, the Claimant challenges the General Division's conclusion that he had not experienced a significant change. He argues that the General Division misunderstood his original job description. He says it contemplated a role and tasks that were different from what he found once he started to work. The Claimant also says that it ignored his "reasonable" expectation that the role and duties would change from what they were when he started working for the employer.

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[28] See para 29 of the General Division decision.
[29] Listen to the audio of the General Division at timestamp: 1:20:15 to 1:21:30.

[98] The General Division acknowledged that the Claimant had expected his role to evolve, and it didn't. It did not analyze whether or not that expectation was reasonable as the Claimant asserts, but again; The General Division was not concerned with whether it was reasonable for him to stay in his job but only whether there were reasonable alternatives to quitting.

[99] Regardless of what the Claimant expected of his position at the time that he was initially hired in 2016, or of his expectation that his job duties would eventually reorient on engineering tasks exclusively, there was some evidence to support the General Division's finding that the Claimant quit because his duties did not change (as he expected) rather than because they **did** change.

[100] Having said that, I accept that the General Division's view of the changes in the Claimant's duties was too narrow. It focused exclusively on how his mix of duties had always included non-engineering tasks, without considering evidence that there may still have been significant changes in the volume or proportion of non-engineering tasks over time.

[101] For example, the General Division read both of the supplied job descriptions as requiring both project management and site supervision.[30] The job description that the Claimant now identifies as his original Energy Application Engineer job description states that the position involves project management and would require the engineer in the position to "manage multiple projects from design phase to commissioning." It is not obvious from the description that the position involved or required "site supervision."

[102] In addition, the General Division did not consider the extent to which the Claimant's duties had shifted to site supervision.

[103] The General Division acknowledged that the Claimant believed his job duties had expanded and that he considered both site supervision and project management to be outside his job description. It noted that the Claimant viewed such roles as "entirely

[30] See para 29 of the General Division decision.

inappropriate" because he was a professional engineer. It also noted that site supervision required other non-engineering tasks including manual labour.[31]

[104] However, the General Division did not mention that the site supervision component of his job had significantly increased in the last two years. The Claimant testified that his employer had required him to do "all the site supervision" in the last two years. He said that this had involved site supervision for multiple projects and for long-term projects.[32] When asked if he had been required to do site supervising before his last two years, he answered, "not specifically," "occasionally," and that he "hadn't really had to do site supervising" before the last two years.[33]

[105] In other words, the General Division ignored or misunderstood evidence that was relevant to whether the Claimant had a significant change in his work duties.

[106] Even so, the Claimant has not made out an arguable case that the General Division made an important error of fact. The General Division's findings did not depend on whether it accepted the Claimant's evidence that his engineering work was increasingly being supplemented or replaced by other duties.

[107] The Claimant had always been expected to perform some non-engineering tasks. Over time, the employer shifted the Claimant's responsibilities to include more of the duties associated with project management and site supervision. This may not have occurred suddenly or all at one time, but it represented a change in his work circumstances.

[108] However, the fact that his work duties had changed in this way does not establish that his workload or the nature of his work had become unbearable. There was little evidence about the way the employer structured or assigned his duties to suggest that his modified work duties left him with no reasonable alternative to quitting. There was no

[31] Listen to the audio recording of the General Division hearing at timestamp: 1:19:23.
[32] Listen to the audio recording of the General Division hearing at timestamp: 1:18:40.
[33] Listen to the audio recording of the General Division hearing at timestamp: 1:19:37.

evidence that they prevented him from talking to his employer about his concerns, looking for other work, or from attempting any of the other suggested alternatives.

[109] There is a decision of the Federal Court of Appeal that supports my reasoning. In a decision called *Canada (Attorney General) v White*, the Court reviewed a case where the Board of Referees found there had been no significant change in the claimant's duties. The claimant successfully appealed to the Umpire which found that there had been a significant change in duties. This is when the Commission sought a judicial review to the Federal Court of Appeal.[34]

[110] The Federal Court of Appeal said that the "crux" of the Board of Referees decision had been its finding that the claimant had not shown she had no reasonable alternative to leaving. It found that that the claimant did not have just cause because she had not talked to her employer because it would have been "a waste of time," and because she did not seek alternative employment. So, it allowed the Commission's appeal.

[111] The Court stated as follows:

> The jurisprudence of this Court imposes an obligation on claimants, in most cases, to attempt to resolve workplace conflicts with an employer, or to demonstrate efforts to seek alternative employment before taking a unilateral decision to quit a job."[35]

[112] There is no arguable case that the General Division made an important error of fact. I have accepted that the General Division ignored evidence that could have supported a finding that the changes in the Claimant's duties were significant. However, even if the General Division had found that the Claimant experienced a significant

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[34] Under a previous EI administrative appeal scheme, the Board of Referees was the first level of appeal, and the Umpire was the final level of appeal. "Judicial review" is how the Umpire's decision is challenged in the courts.
[35] *Canada (Attorney General) v White,* 2011 FCA 190. Citing with approval: *Canada (Attorney General) v. Hernandez*, 2007 FCA 320; *Canada (Attorney General) v. Campeau*, 2006 FCA 376; *Canada (Attorney General) v. Murugaiah*, 2008 FCA 10.

change in his work duties, this would not have affected the General Division's finding that he had reasonable alternatives to leaving.

– **Evidence of working conditions dangerous to health or safety**

[113] The Claimant argues that the General Division misunderstood his health and safety concerns and ignored evidence relevant to the existence of working conditions dangerous to health or safety.

New hire

[114] The General Division understood the Claimant's argument that the employer had hired a technician who was later injured. It understood that the Claimant did not believe the technician was properly "vetted," or had proper personal protective gear (PPE).

[115] The General Division found that these concerns had nothing to do with the Claimant's own personal safety. It noted that PPE was available for use, and that the employer expected it to be used. It stated that there was no evidence that the Claimant was refused access to PPE or encouraged to work without it.

[116] The General Division's conclusion follows from the evidence, and the Claimant did not identify any evidence that the General Division may have ignored or misunderstood. He now argues that these things were part of a pattern of prior safety concerns and that the employer minimized or dismissed such concerns, but he did not specify the prior concerns and they are unsupported by evidence.

[117] The Claimant only discussed the "vetting" of the new technician in terms of the security of intellectual property, which the General Division dismissed as irrelevant to whether he had just cause for leaving. He now says that the General Division misunderstood his argument, but it is not apparent how the General Division was supposed to understand the evidence. The Claimant has not clarified what it was that he meant to argue in connection with "vetting" and "intellectual property."

Fire alarm

[118] The Claimant also talked about his safety concern with a fire alarm in one of the buildings in which he supervised or managed a project. He had complained that the alarm was too quiet for him to hear with a closed door.

[119] The General Division said the Claimant did not escalate his concern to his manager or the fire marshal. The Claimant says that the General Division got his evidence wrong. He says that he did speak to his manager. He also argues that that the General Division's reasoning was faulty because it implied that his concern could not have been genuine if he did not escalate to the fire marshal.

[120] I have listened to the audio of the General Division and the Claimant is correct. The Claimant testified that he spoke to the building manager and **to his manager as well,** but that he had not followed up with his manager**.** [36]So, the General Division was mistaken when it said that he did not escalate the issue to his manager.

[121] However, the General Division decision was not based on its misunderstanding of the evidence. It noted that a contractor worked on the alarm system after he complained. It said that building management had addressed his concerns and there was no evidence that the fire alarm was inoperable at the time he quit. As a result, it found that the fire alarm did not represent a danger to his health or safety at the time he left his job. The General Division's misunderstanding did not affect the appeal result because it did not make any of the identified alternatives to leaving less reasonable.

[122] I also note that the General Division did not imply that his safety concern was not genuine because he did not escalate to the fire marshal. It was simply reciting the Claimant's testimony. Its decision was based on its view that his safety concern did not factor into his reason for quitting because it already had been addressed.

[36] Listen to the audio recording of the General Division hearing at timestamp: 1:14:40.

Inability to take vacation

[123] The Claimant argued to the General Division that he was unable to take his full vacation time and that this was having a negative effect on his health. The General Division did not accept either argument. It stated that the Claimant had not provided evidence that he was denied vacation leave; only that he felt he could not take it. It also stated that there was no evidence that the Claimant's stress had reached the point that it was a danger to his health or safety.

[124] The Claimant says that the General Division "assumed" he needed to make a formal request to prove "denial." He says that his employer discouraged vacation in other ways. He argues that he was effectively denied because the workload was overwhelming, he had deadlines, and no colleague to cover his responsibilities.

[125] There is no arguable case that the General Division made an important error of fact by ignoring or misunderstanding the Claimant's evidence about his inability to take a vacation.

[126] The General Division was correct that there was no evidence the employer denied a vacation leave request. The Claimant has not pointed to evidence that he requested vacation and was denied, or that he was refused a vacation leave to which he was entitled.

[127] The Claimant's argument that it was impractical to take leave because of his various work demands is the same as his argument that he felt he could not take vacation. The General Division addressed the Claimant's concerns that his work demands made it impractical to take leave, when it noted that he felt he could not take vacation.

[128] The Claimant also argues that the General Division ignored his pay stub evidence. The General Division decision acknowledged that the Claimant was relying on pay stub information to prove he was unable to take vacation time, but it did not analyze the evidence further.

[129] However, the Claimant says that he submitted the pay stub evidence to prove that he had not taken 28 days of vacation in three years. He had argued to the General Division that this showed he was overburdened and that the company did not provide a reasonable work/life balance.

[130] The pay stub evidence is consistent with the Claimant's testimony that his work priorities made it difficult to take time off (although it is not the only reason that employees take a payout instead of time off). At the same time, it could not establish that his employer was denying him the vacation leave to which he was entitled.

[131] There is no arguable case that the General Division ignored the pay stub evidence. Without proof that the employer refused the Claimant's leave request or that it was the employer's policy to deny all leave requests, the pay stub evidence was of little probative value.

[132] The General Division is not required to refer to each and every piece of evidence that a claimant thinks it ought to have considered. It is normally presumed to have reviewed and considered the totality of the evidence.[37] The evidence was not so important that the General Division might be expected to expressly demonstrate that it considered it.

– **Evidence of antagonism with a supervisor**

[133] The Claimant argues that the General Division ignored evidence that his workplace was toxic. This was a challenge to the General Division's finding that his supervisor was not antagonistic towards him.

[134] The Claimant stated that the General Division ignored how his manager had removed technicians' emails from his request for input on project deadlines.[38] It also omitted to mention that his manager demanded him to submit four project documents "ready for issue" while blocking his access to technical input. In the view of the

[37] Simpson v Canada (Attorney General), 2021 FCA 82; Sibbald v Canada (Attorney General), 2022 FCA 157.
[38] This is presumably a reference to the time that the employer decided not to copy other technicians in its emails to the Claimant. See also discussion under "imminent dismissal."

Claimant, the manager's demands and the timeline for the project documents were meant to set him up for failure.

[135] He also asserts that the General Division failed to consider his wife's witness statement about a conversation involving two of the Claimant's former colleagues, which took place about three months after he resigned. The statement says that the former colleagues confirmed that the projects, which the Claimant had been working on, remained incomplete, and that they did not have formal deadlines for completion.

[136] The General Division did not refer to this evidence in its discussion of whether the Claimant's supervisor was antagonistic. However, there is no arguable case that the General Division made an error of fact when it found that the evidence did not show that he was experiencing antagonism from his supervisor.

[137] The General Division noted only that there was, "nothing in the Appeal record that supports [the Claimant's] assumptions that his manager was disrespectful, aggressive, demeaning, or hostile." The appeal record appears to support this.

[138] Despite this, the Claimant maintains that his manager was antagonistic and cultivated a toxic work environment. His argument implies that an inference of antagonism is unavoidable from the evidence about emails and deadlines, but that is far from true. The Claimant worked in an admittedly stressful position within a demanding profession. Given this, the limitations and demands he describes—or that may be inferred from his wife's statement—do not establish that the manager's actions or demands were unreasonable, and they do not show that the Claimant was necessarily singled out for unreasonable treatment, or that the Claimant's manager was motivated by hostility. This evidence is not especially probative of the question whether the Claimant's manager was antagonistic to the Claimant.

[139] Whatever the General Division's reason for omitting to reference the statement evidence from his wife, it is not required to reference each and every piece of evidence, as I noted earlier in this decision.

– Evidence of the Claimant's imminent dismissal

[140] The Claimant told the General Division that he had to quit before he was fired. He explained that being fired would have been "professional suicide." He said that he would never be able to work again as an engineer if he were fired.

[141] The General Division member acknowledged that the Claimant was having trouble meeting all the expectations of the employer and that the employer was raising job performance concerns. However, she said that there was no evidence that the Claimant's termination was "professional suicide," and no evidence to support his assumption that he was about to be fired. It rejected his argument, saying that the Claimant had not provided evidence to support his assumption that he was about to be fired or that he would not be able to work again if he were fired.

[142] If the Claimant had presented evidence that could establish that his dismissal was imminent and evidence that his career would actually be destroyed if he were fired, such evidence would be relevant to whether the alternatives to leaving were truly reasonable. Any "alternative to leaving," would have at least delayed the Claimant's departure, perhaps allowing time for the employer to pre-empt his resignation and dismiss him.

[143] The Claimant says that the General Division ignored evidence that his dismissal was imminent. He states that there was evidence that the employer was intentionally creating a work environment he considers toxic, with deadlines he views as unrealistic, and that the purpose of these actions was to make him fail. These assertions represent the Claimant's personal perceptions and his subjective evaluation of those perceptions. Proof of those assertions would require evidence.

[144] In his statements to the Commission, the Claimant said that he feared he would be terminated when he was scheduled to meet with his manager. He testified that his manager had asked for a meeting on April 21, citing a concern with his performance.[39] The Claimant responded suggesting that they could discuss his own concern that his

[39] Listen to the audio recording of the General Division hearing at timestamp: 00:37:30, 38:20.

roles and responsibilities needed to be defined. He said that the manager decided to bring their April meeting forward to March 28, which was one of his project deadlines. The Claimant said he feared that his manager might decide to terminate him on that day.[40] He explained that he believed he might be fired because he had missed a project deadline. He said that his manager had emailed him, noting his missed deadline, and copying the email to the manager in their main office in Edmonton.[41]

[145] The General Division understood that the Claimant's manager was concerned about the Claimants' performance and that it had requested the meeting to discuss its concern. It also understood that the Claimant wanted the meeting agenda to include his concerns about his proper role and responsibilities. It considered the employer's evidence that it had been open to having a dialogue about the Claimant's concerns, but that the Claimant had resigned before their scheduled meeting. It considered that the Claimant had been with the company since 2016 with no discipline history and it considered GS's statement that other company employees had not expected his sudden resignation.

[146] The Claimant argues that the Appeal Division overlooked evidence. In his submission to the Appeal Division, he itemized evidence that was missed. This included what he said he was told by a technician after he left his job. The technician apparently told him that his project deadlines (which he viewed as unrealistic) had not been critical, or not as critical as he was led to believe. The Claimant spoke again of how his employer decided not to copy other technicians in its emails to the Claimant. He maintains that the employer assigned him inappropriate manual tasks, and that it did not clarify his duties.

[147] There is no arguable case that the General Division made an important error of fact by finding that it was unlikely the Claimant was about to be fired.

[148] I acknowledge that the General Division did not refer to this other evidence that the Claimant highlighted in his submission. But this evidence does not suggest that the

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[40] See GD3-30.
[41] Listen to the audio recording of the General Division hearing at timestamp: 00:43:40.

Claimant was being pressured to quit or that his dismissal was imminent. Nor was there any evidence whatsoever to support his claim that his professional career would be finished if he let the employer dismiss him.

[149] The Claimant may sincerely believe he was about to be dismissed. If so, he would naturally disagree with how the General Division considered the various circumstances that gave rise to his belief, and with its finding that it was unlikely he was about to be fired.

[150] However, the Claimant's disagreement with how the General Division weighed or evaluated the evidence cannot establish an error of fact. The Appeal Division has no authority to interfere with how the General Division weighs or evaluates the evidence.[42] It can only find an error of fact, if a finding of fact (on which the decision was based) has no basis in the evidence, or if it ignores or misunderstands relevant evidence.

[151] The Claimant has not made out an arguable case that the General Division acted unfairly, made an error of law, or made an important error of fact. His appeal has no reasonable chance of success.

Conclusion

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

Stephen Bergen
Member, Appeal Division

[42] See, for example: *Tracey v Canada (Attorney General),* 2015 FC 1300; *Hideq v Canada (Attorney General)*, 2017 FC 439.