



Citation: *NK v Canada Employment Insurance Commission*, 2025 SST 158

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

# **Leave to Appeal Decision**

**Applicant:** N. K.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated February 7, 2025  
(GE-25-139)

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**Tribunal member:** Janet Lew

**Decision date:** February 21, 2025

**File number:** AD-25-122

## Decision

[1] Leave (permission) to appeal is refused. The appeal will not be going ahead.

## Overview

[2] The Applicant, N. K. (Claimant), is seeking leave to appeal the General Division decision. The Claimant had been trying to get an extension of time so he could ask the Respondent, the Canada Employment Insurance Commission (Commission), to reconsider its decision to deny him Employment Insurance benefits.<sup>1</sup> The Claimant asked for the reconsideration more than 1.5 years after the Commission had made its decision.

[3] The General Division found that the Commission used its discretion judicially when it did not give the Claimant an extension of time to ask it to reconsider its initial decision. In other words, the General Division found that the Commission had acted properly. As a result, the General Division found that it could not interfere with the Commission's decision not to give the Claimant an extension of time.

[4] The Claimant argues that the General Division failed to make sure that the process was fair. He argues that "there was more to the story regarding [his] case."<sup>2</sup> He argues that his employer wrongfully dismissed him from his employment, so says that he is entitled to receive Employment Insurance benefits.

[5] Before the Claimant can move ahead with the appeal, I have to decide whether the appeal has a reasonable chance of success.<sup>3</sup> In other words, there has to be an arguable case. If the appeal does not have a reasonable chance of success, this ends the matter.<sup>4</sup>

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<sup>1</sup> See Commission's initial decision dated March 15, 2023, at GD 3-14.

<sup>2</sup> See Claimant's Application to the Appeal Division – Employment Insurance, at AD 1-3.

<sup>3</sup> See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

<sup>4</sup> Under section 58 2) of the *Department of Employment and Social Development (DESD) Act*, I am required to refuse permission if I am satisfied "that the appeal has no reasonable chance of success."

[6] I am not satisfied that the appeal has a reasonable chance of success. Therefore, I am not giving permission to the Claimant to move ahead with the appeal.

## **Issues**

[7] The issues are as follows:

- a) Is there an arguable case that the General Division failed to make sure that the process was fair?
- b) Is there an arguable case that the General Division missed some of the evidence?

## **Analysis**

### **A party has to pass the test for getting permission to appeal**

[8] I can give the Claimant permission to appeal if the appeal has a reasonable chance of success. Leave to appeal is refused if the appeal does not have a reasonable chance of success. A reasonable chance of success exists if the General Division may have made a jurisdictional, procedural, legal, or a certain type of factual error.<sup>5</sup>

[9] For these types of factual errors, the General Division had to have based its decision on an error that it made in a perverse or capricious manner, or without regard for the evidence before it.<sup>6</sup>

### **The Claimant does not have an arguable case that the General Division failed to make sure that the process was fair**

[10] The Claimant does not have an arguable case that the General Division failed to make sure that the process was fair.

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<sup>5</sup> See section 58(1) of the DESD Act.

<sup>6</sup> See section 58(1)(c) of the DESD Act.

[11] A party enjoys certain rights to make sure that the process is fair. For instance, a party has the right to know the case against them, the right to answer that case, and the right to an unbiased and impartial decision-maker.

[12] A procedural error involves the fairness of the process at the General Division. It is not concerned with whether a party feels that the decision or the outcome is unjust.

[13] Here, there is no suggestion that the Claimant did not receive a fair appeal or the chance to fully present his case at the General Division. He was given the opportunity to choose how the appeal proceeded, and he had the chance to file any documents and arguments to support his case. There is nothing that suggests the General Division member was biased or that there was a reasonable apprehension of bias. There is no evidentiary foundation to support the Claimant's allegations that the General Division acted unfairly.

[14] I am not satisfied that there is an arguable case that the General Division failed to make sure that the process was fair or that it did not act fairly.

### **The Claimant does not have an arguable case that the General Division missed some of the evidence**

[15] The Claimant does not have an arguable case that the General Division missed some of the evidence, or that it based its decision on a factual error that it made in a perverse or capricious manner or without regard for the material before it.

[16] The Claimant argues that "[T]here was more to the story," than the General Division addressed in its decision. He argues that his employer wrongfully dismissed him. He writes that the President of the company did not want to dismiss him, but his supervisor, who he felt did not treat him fairly, made the decision to dismiss him. He notes that he has struggled to find work since his employer dismissed him.

[17] The General Division referred to some of this evidence. Even so, it is clear that the General Division determined that this evidence was not relevant to the issue it had to consider, namely, whether the Commission had acted judicially. As the General Division noted, if an applicant makes a reconsideration request 365 days after the day

on which the decision had been communicated to them, they have to show the following, that:

- (a) There is a reasonable explanation for requesting a longer period
- (b) The person has demonstrated a continuing intention to request a reconsideration,
- (c) The request for reconsideration has a reasonable chance of success, and
- (d) No prejudice would be caused to the Commission.<sup>7</sup>

[18] Whether the Claimant had been wrongfully dismissed did not have anything to do with whether he had a reasonable explanation for asking for a longer period (for his reconsideration request), whether he had demonstrated a continuing intention to ask for a reconsideration, or whether any prejudice would be caused to the Commission. The issue about whether the Claimant had been wrongfully dismissed simply was not relevant to these considerations.

[19] The Claimant suggests that his dismissal was relevant to the third factor, that his request had a reasonable chance of success. So, I will examine this in greater detail.

[20] The General Division noted the Commission's position. The Commission argued that the request for reconsideration did not have a reasonable chance of success because it accepted the employer's report that the Claimant had struck a co-worker, which it found was not acceptable conduct. The Commission suggested that either the dismissal was justified, or that the Claimant's behaviour amounted to misconduct under the *Employment Insurance Act*.

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<sup>7</sup> See General Division decision at paras 11 to 13, citing *Reconsideration Request Regulations*.

[21] The Claimant challenges his employer's account. He argues that his employer wrongfully dismissed him, so he denies that there was any misconduct. He argues that, as there was no misconduct on his part, he should get Employment Insurance benefits.

[22] The General Division did not consider whether the Claimant's request for reconsideration had a reasonable chance of success in the context of whether he might have been wrongfully dismissed. But the issue about whether the Claimant was wrongfully dismissed was not relevant to the issue about whether his request for reconsideration had a reasonable chance of success.

[23] It was not relevant because the law is clear that employment insurance does not deal with whether an applicant has been wrongfully dismissed.<sup>8</sup> There are other avenues outside the Employment Insurance process that are available to a claimant to pursue a claim for wrongful dismissal.

[24] I am not satisfied that there is an arguable case that the General Division overlooked evidence about whether the Claimant had been wrongfully dismissed because it simply was not relevant to the whole Employment Insurance question.

[25] Besides, as the General Division noted, at the time, the Claimant did not dispute whether the Commission had exercised its discretion judicially. He asked for an extension at that time because he had been unable to find work and needed some financial assistance.

## Conclusion

[26] The appeal does not have a reasonable chance of success. Therefore, permission to appeal is refused. This means that the appeal will not be going ahead.

Janet Lew  
Member, Appeal Division

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<sup>8</sup> See, for instance, *Canada (Attorney General) v McNamara*, 2007 FCA 107.