



Citation: *CD v Canada Employment Insurance Commission*, 2025 SST 189

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: C. D.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated January 29, 2025
(GE-24-4021)

Tribunal member: Glenn Betteridge

Decision date: March 4, 2025

File number: AD-25-120

Decision

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

Overview

[2] C. D. is the Claimant. I can give her permission to appeal the General Division decision if her appeal has a reasonable chance of success.

[3] Her employer (a roofing company) laid her off in mid-December, at the end of the season. That's what her record of employment said. The Canada Employment Insurance Commission accepted her claim and paid her benefits.

[4] In early January she lost her job. Her employer sent the Commission an amended record of employment. The employer wrote she was dismissed or suspended.

[5] In June the Commission reconsidered her claim. It decided her employer dismissed her for misconduct under the *Employment Insurance Act* (EI Act). And because she caused her unemployment, the Commission disqualified her from getting benefits.¹ It created an overpayment and debt for the benefits it had already paid her.

[6] The Claimant appealed the Commission's decision to this Tribunal's General Division. She argued her employer dismissed her because it found out she was looking for work.

[7] The General Division dismissed her appeal. It decided her employer dismissed her for making derogatory social media posts about another employee. This was after her employer had warned her about harassment and bullying. The General Division decided this counted as wilful misconduct.

[8] Unfortunately, the Claimant's appeal of that decision doesn't have a reasonable chance of success.

¹ See section 30 of the *Employment Insurance Act*.

Issue

[9] Does the Claimant's appeal have a reasonable chance of success?

I'm not giving the Claimant permission to appeal

[10] I read the Claimant's application to appeal, which included two documents.² I read the General Division decision. I reviewed the documents in the General Division file.³ And I listened to the hearing recording.⁴ Then I made my decision.

[11] For the reasons that follow, I'm not giving the Claimant permission to appeal.

The permission to appeal test screens out appeals that don't have a reasonable chance of success⁵

[12] I can give the Claimant permission to appeal if her appeal has a reasonable chance of success.⁶ This means she has to show an **arguable ground of appeal** upon which her appeal **might succeed**.⁷

[13] I can consider four grounds of appeal, which I call **errors**.⁸ The General Division

- used an unfair process or wasn't impartial (a procedural fairness error)
- didn't use its decision-making power properly (a jurisdictional error)
- made a legal error
- made an important factual error

[14] The Claimant's reasons for appeal set out the key issues and central arguments I have to consider.⁹

² See AD1 and AD1B.

³ See GD2, GD3, GD4, and GD6.

⁴ The hearing lasted approximately one hour.

⁵ See *Paradis v Canada (Attorney General)*, 2016 FC 1282 at paragraph 32.

⁶ See section 58(2) of the *Department of Employment and Social Development Act* (DESD Act).

⁷ See *Osaj v Canada (Attorney General)*, 2016 FC 115.

⁸ See section 58(1) of the DESD Act.

⁹ See *Hazaparu v Canada (Attorney General)*, 2024 FC 928 at paragraph 13.

The Claimant hasn't shown her appeal has a reasonable chance of success

[15] The Claimant's first Application was missing the reasons for appeal page of the form. The Tribunal gave her another chance to send in a complete Application. She didn't check an error box on her second Application. She gave reasons for appealing on both Applications.

[16] The Claimant sent new evidence to show her employer acted unfairly and improperly.¹⁰ Unfortunately, I can't consider this evidence. It doesn't meet an exception to the general rule that says the Appeal Division can't consider new evidence.¹¹

[17] None of the Claimant's reasons are about errors the General Division made. 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.¹²

[18] The Claimant doesn't refer to the General Division decision.

[19] The Claimant is trying to challenge her unjust dismissal. She says her employer acted unfairly, unprofessionally, and "doesn't adhere to the protocols of the Labour Laws of Alberta."¹³ She says the owner of the company has poor character and is unable to manage his company and staff. She says her firing was unjust and wants an investigation opened.

[20] I understand the Claimant firmly believes her employer didn't treat her fairly. But under the legal test for misconduct, the General Division could only consider whether **her behaviour** counted as misconduct.¹⁴ It could not consider her employer's behaviour, in other words, whether it acted fairly towards her and respected the terms of her employment.

¹⁰ See AD1-1 to AD1-3, and AD1B-1.

¹¹ See *Sibbald v Canada (Attorney General)*, 2022 FCA 157 at paragraphs 37 to 40.

¹² See *Griffin v Canada (Attorney General)*, 2016 FC 874 at paragraph 20.

¹³ See AD1B-1.

¹⁴ See *Lance v Canada (Attorney General)*, 2025 FCA 41 at paragraphs 7 and 8.

[21] The courts have said claimants can use other legal avenues to challenge their employer's conduct. For example, an employee can sue for wrongful dismissal, file a human rights complaint, or make a complaint under provincial occupational health and safety law.

I didn't find an arguable case the General Division made an error

[22] Because the Claimant is representing herself, I looked beyond her reasons to see if I can give her permission to appeal.¹⁵

[23] There isn't an arguable case the General Division made a jurisdictional error. It correctly identified the legal issue it had to decide, based on the questions it had to answer (paragraphs 6 and 7). Then it decided only that issue by considering only those questions.

[24] There isn't an arguable case the General Division made a legal error. It correctly set out the legal test for misconduct (paragraph 7, and 13 to 15). Then it used that test. First, it had to decide the reason the Claimant lost her job. It did that (paragraph 8). Then it had to decide whether that reason counted as misconduct under the EI Act. It did that (paragraph 18).

[25] There isn't an arguable case the General Division arrived at its decision by ignoring or misunderstanding relevant evidence. I reviewed the General Division file and listened to the hearing recording. The evidence supports the General Division's finding the employer dismissed the Claimant because she posted derogatory comments about a coworker to social media. And the evidence supports the General Division's finding the Claimant knew or should have known her employer would dismiss her for doing that.

[26] There isn't an arguable case the General Division made a procedural fairness error. The Claimant didn't argue or even suggest the General Division process was

¹⁵ The Federal Court has said the Appeal Division should not apply the leave to appeal test mechanistically and should review the General Division record. See for example *Griffin v Canada (Attorney General)*, 2016 FC 874; *Karadeolian v Canada (Attorney General)*, 2016 FC 615; and *Joseph v Canada (Attorney General)*, 2017 FC 391.

unfair, or the member was biased or prejudged her case. And nothing I read or heard suggested that.

Conclusion

[27] The Claimant hasn't shown an arguable case the General Division made an error that might change the outcome in her appeal. And I didn't find an arguable case.

[28] This tells me her appeal doesn't have a reasonable chance of success. So I can't give her permission to appeal the General Division decision.

Glenn Betteridge
Member, Appeal Division