Citation: *RL v Canada Employment Insurance Commission*, 2025 SST 387

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	R. L.
Representative:	T. S.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	General Division decision dated March 5, 2025 (GE-25-333)

Tribunal member:	Glenn Betteridge
Decision date:	April 14, 2025
File number:	AD-25-255

Decision

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

Overview

[2] R. L. is the Claimant. He wants to appeal a General Division decision. I can give him permission to appeal if his appeal has a reasonable chance of success.

[3] The General Division decided he lost his job for a reason that counted as misconduct under the *Employment Insurance Act* (EI Act).[1] It found his employer dismissed him for breaching its policy by having alcohol at work. And it found his breach was reckless because he knew about his employer's policy and knew he could be dismissed. So, the General Division disqualified him from getting benefits.

[4] He argues the General Division made all four errors the law says I can consider.

[5] Unfortunately, his appeal doesn't have a reasonable chance of success. This means I can't give him permission to appeal.

Issue

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

I'm not giving the Claimant permission to appeal

[7] I read the Claimant's application to appeal.[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.

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[1] See section 30 of the *Employment Insurance Act*.
[2] See AD1.
[3] See GD2, GD3, GD4, GD6, and GD7.
[4] The hearing lasted approximately 58 minutes.

[8] The Claimant took legal action against his employer after he was dismissed. He settled his case. As part of the settlement, his employer changed his record of employment (ROE).

[9] The Claimant seems to have incorrectly assumed he would qualify for benefits because of the settlement and the adjusted ROE. A ROE and a settlement agreement are evidence the General Division can consider. The Claimant didn't put the settlement agreement (the document) into evidence.

[10] The General Division decided only the issue it had to decide, using the settled law about misconduct it had to use. And the General Division used a fair procedure. The Claimant's representative agreed to the process the General Division suggested. So, he hasn't shown an arguable case the General Division made an error.

[11] For these reasons and the reasons that follow, I am not giving the Claimant permission to appeal.

The permission to appeal test screens out appeals that don't have a reasonable chance of success[5]

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

[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.

- 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]

[15] When a claimant doesn't explain or give details about an alleged error, that ground of appeal has no reasonable chance of success.[10] The Claimant didn't explain an error he says the General Division made—he checked the box but didn't explain how the General Division made an important error of fact. So, he hasn't shown an arguable case the General Division made that error.

There isn't an arguable case the General Division process was unfair, or it made a legal error

[16] The General Division makes an error if it uses an unfair process. 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.[11]

[17] The Claimant hasn't argued the General Division member wasn't impartial. He says the General Division process was unfair for two reasons.

[18] First, the Claimant argues even though his representative asked for an adjournment, the General Division went ahead with the hearing. The Claimant says the General Division breached procedural fairness by not granting the adjournment because he and his representative only got the documents three business days before the hearing.

[19] I can't accept that argument for three reasons.

- The Claimant's representative waived her objection about unfairness when she agreed to go ahead with the hearing as proposed by the General

[9] See *Hazaparu v Canada (Attorney General)*, 2024 FC 928 at paragraph 13.
[10] See *Twardowski v Canada (Attorney General)*, 2024 FC 1326 at paragraph 59.
[11] See *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69; and *Kuk v Canada (Attorney General)*, 2024 FCA 74.

Division. The General Division proposed, and she agreed, that her client would testify at the hearing. Then she would have seven days after the hearing to send her submissions.[12] She agreed to that twice, including once after going off the record to speak with her client—when she would have been able to get instructions to go ahead as the General Division had proposed.[13] She can't now say the procedure she (and presumably her client) agreed to without objection was unfair to her client.

- The Claimant hasn't shown the General Division stopped him from knowing the case he had to meet. And he hasn't shown the General Division deprived him of a full and fair opportunity to present his case by managing the process the way it did. He had the opportunity to send in evidence before the hearing, present evidence at the hearing, and make legal arguments after the hearing.

- The General Division adequately addressed this issue in its decision (paragraphs 7 and 8).

[20] Second, the Claimant says the General Division process was unfair because it relied on fictitious caselaw the Commission cited in its written arguments (GD4). The Claimant says the points of law these cases made could not be verified. The Claimant also says the General Division made an **error of law** when it relied on the points of law "derived from fictitious cases."

[21] I can't accept these arguments for three reasons.

- The General Division had no procedural or substantive obligation to ensure the Commission's arguments were accurate or correct. The process is adversarial. It was the Claimant's representative's job to make arguments about the fictitious caselaw, which she did.[14]

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[12] See GD6 and GD7.
[13] Listen to the General Division hearing recording at 11:55 to 12:26 where the Claimant's representative said there was no reason she could no respond in writing to the Commission's arguments. Also listen at 14:25.
[14] See GD7-8 and GD7-9.

- The General Division didn't rely on the fictitious caselaw (paragraph 6). As the member correctly pointed out: "But the fact the citations were not accurate doesn't necessarily mean the Commission's statement of law is incorrect. It does mean I can't rely on those decisions as authority."

- The General Division used the correct legal test for misconduct, including the correct law about settlement agreements (paragraphs 10, 15 to 17, and 24). The caselaw about misconduct is settled, especially since the Federal Courts have released 30 decisions in COVID vaccine misconduct cases confirming and clarifying the law about misconduct. Perhaps the Claimant's representative wasn't aware of just how settled the law is—the General Division was.

[22] So, the Claimant hasn't shown there is an arguable case the General Division process or hearing was unfair, or the General Division made a legal error.

No arguable case the General Division made a jurisdictional or legal error when it didn't analyze the employer's policy

[23] The Claimant argues the General Division made a jurisdictional error when it said it could not decide whether the employer's policy was reasonable, or the employer used it fairly. The Federal Courts have addressed this issue when clarifying the legal test for misconduct. So, the Claimant's argument could also be about a legal error.

[24] The General Division makes a jurisdictional error if it decides an issue, it has no power to decide or doesn't decide an issue it has to decide. The General Division makes a legal error where it misstates or doesn't follow a legal test or court case it has to follow.

[25] There isn't an arguable case the General Division made a legal or jurisdictional error when it decides it didn't have jurisdiction to consider whether the employer's policy was reasonable or whether the employer applied it fairly to the Claimant (paragraph 23). The law says that's not part of the legal test for misconduct.

[26] The Federal Court of Appeal recently summarized the law about misconduct like this:

> The Employment Insurance Act governs the relationship between the unemployed person and any entitlement to benefits, not the employee's contract of employment. […] The Act itself does not define misconduct – that has been left to the Social Security Tribunal and this Court, which has held that misconduct occurs where an employee chooses to engage in conduct which would impair the performance of their duties… Consequently, the only question is whether the employee was aware or ought to have been aware of the employer's policy, the consequences of failing to comply with that policy and engaged in conduct which, objectively, could lead to a loss of employment. Questions such as whether the dismissal was unfair or unjust, whether the policy was well founded, whether there were options short of dismissal and whether the policy or dismissal conformed to the collective agreement are irrelevant to the inquiry as to whether the claimant is entitled to benefits.[15] [Citations left out]

[27] The General Division rejected the Claimant's argument based on two court decisions cited in the quote (paragraph 23). In other words, the General Division understood and used the correct law, including the binding court decisions.

[28] The Claimant hasn't shown an arguable case the General Division made an error that might change the outcome in his appeal.

[29] This tells me his appeal doesn't have a reasonable chance of success. And I can't give him permission to appeal the General Division decision.

Glenn Betteridge
Member, Appeal Division

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