



Citation: *SK v Canada Employment Insurance Commission*, 2025 SST 417

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: S. K.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated March 31, 2025
(GE-25-609)

Tribunal member: Solange Losier

Decision date: April 24, 2025

File number: AD-25-237

Decision

[1] Leave (permission) to appeal is refused. The appeal will not proceed.

Overview

[2] S. K. is the Claimant and was working as a security guard. She applied for Employment Insurance benefits (benefits) when she stopped working.

[3] The Canada Employment Insurance Commission (Commission) decided that the Claimant was dismissed from her job due to misconduct.¹

[4] The General Division concluded the same. It found the Claimant was dismissed from her job due to misconduct.² This resulted in a disqualification to benefits.³

[5] The Claimant is now asking for permission to appeal. She argues that the General Division made several errors.⁴

[6] I am denying the Claimant's request for permission to appeal because it has no reasonable chance of success.⁵

Issue

[7] Did the General Division make any reviewable errors when it decided the misconduct issue?

Analysis

[8] An appeal can proceed only if the Appeal Division gives permission to appeal.⁶

¹ See Commission's initial and reconsideration decision at pages GD3-31 and GD3-45.

² See General Division decision at pages AD1A-1 to AD1A-7.

³ See section 30(1) of the *Employment Insurance Act* (EI Act).

⁴ See Application to the Appeal Division at pages AD1-1 to AD1-7.

⁵ See section 58(2) of the *Department of Employment and Social Development Act* (DESD Act).

⁶ See section 56(1) of the DESD Act.

[9] I must be satisfied that the appeal has a reasonable chance of success. This means that there must be some arguable ground that the appeal might succeed.⁷

[10] I can only consider certain types of errors. I have to focus on whether the General Division could have made one or more of the relevant errors (also known as “grounds of appeal”).

[11] The grounds of appeal to the Appeal Division are that the General Division:⁸

- proceeded in a way that was unfair
- acted beyond its powers or refused to exercise those powers
- made an error of law
- based its decision on an important error of fact.

[12] For the appeal to proceed to the next step, I have to find that there is a reasonable chance of success on one of the above grounds of appeal.

I am not giving the Claimant permission to appeal

The Claimant argues that the General Division made several errors

[13] The Claimant argues that the General Division didn’t follow a fair process, made an error of jurisdiction, an error of law and an important error of fact.⁹

[14] She argues the General Division mocked her religious beliefs, disability, the law, and human rights. She says that it played with words to prove there was misconduct. She was sick and her body was not well.¹⁰

There is no arguable case that the General Division didn’t follow a fair process

[15] The principles of natural justice are concerned with procedural fairness. The right to a fair hearing before the Tribunal includes certain procedural protections. For

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

⁸ See section 58(1) of the DESD Act.

⁹ See page AD1-3.

¹⁰ See page AD1-3.

example, the right to an impartial (unbiased) decision maker, the right of a party to know the case against them and to be given an opportunity to respond to it.

[16] The Claimant hasn't pointed out how or where the General Division mocked her religious beliefs, disability, the law, and human rights. So, I listened to the audio recording of the General Division hearing and reviewed the file, as well as the decision under appeal.

[17] There was no indication that the General Division was mocking her religious beliefs, disability, the law, or human rights. The audio recording shows that the General Division was respectful throughout the hearing. The Claimant explained her circumstances and the General Division asked her relevant questions about her case.

[18] In its decision, the General Division acknowledged the Claimant's argument that she wasn't sleeping at work but that she was meditating and her "third eye" allowed her to see what was going on. However, it rejected that argument finding that she was dozing and sleeping on the job and that conduct led to her dismissal.¹¹

[19] There is no arguable case that the General Division didn't follow a fair process.¹²

There is no arguable case that the General Division made an error of jurisdiction or an error of law

[20] An error of jurisdiction means that the General Division didn't decide an issue it had to decide or decided an issue it did not have the authority to decide.¹³

[21] An error of law happens when the General Division does not apply the correct law or uses the correct law but misunderstands what it means or how to apply it.¹⁴

[22] The Claimant hasn't pointed out how the General Division made these errors.

¹¹ See paragraphs 15–17 of the General Division decision.

¹² See section 58(1)(a) of the DESD Act.

¹³ See section 58(1)(a) of the DESD Act.

¹⁴ See section 58(1)(b) of the DESD Act.

[23] The Claimant appealed the Commission's reconsideration decision disqualifying her from getting benefits due to misconduct.¹⁵ So, the General Division had to decide whether the Claimant lost her job due to her own misconduct.

[24] The *Employment Insurance Act* (EI Act) says that a person who is dismissed because of misconduct is not entitled to receive benefits.¹⁶

[25] Misconduct is not defined in the EI Act. The Federal Court of Appeal (FCA) has provided a settled definition in *Mishibinijima v Canada (Attorney General)* which defines "misconduct" as conduct that is wilful, which means that the conduct was conscious, deliberate, or intentional.¹⁷ It also includes conduct that is reckless that is almost wilful.¹⁸

[26] The FCA has also said there is misconduct if the person knew or should have known the conduct could get in the way of carrying out their duty to the employer and that dismissal was a real possibility.¹⁹

[27] The General Division correctly stated the relevant law, and case law in its decision.²⁰ Its decision also shows that it only decided the issues it had the power to decide (misconduct) and didn't decide anything it didn't have the power to decide.

[28] There is no arguable case that the General Division made an error of jurisdiction or error of law.²¹

There is no arguable case that the General Division made an important error of fact

[29] An error of fact happens when the General Division has "based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it."²²

¹⁵ See page GD3-45.

¹⁶ See section 30(1) of the EI Act.

¹⁷ See *Mishibinijima v Canada (Attorney General)*, 2007 FCA 36, at paragraph 14.

¹⁸ See *McKay-Eden v Her Majesty the Queen*, A-402-96.

¹⁹ See *Mishibinijima*, at paragraph 14.

²⁰ See paragraphs 11–14 and 24 of the General Division decision.

²¹ See section 58(1)(a) and 58(1)(b) of the DESD Act.

²² See section 58(1)(c) of the DESD Act.

[30] The Claimant says that the General Division played with words to prove there was misconduct. She wrote that she was sick, and her body was not well.

[31] The General Division decided that the Claimant lost her job because she was dozing and sleeping at work. The Claimant admitted to the conduct in question before the General Division.²³ It determined that her conduct was reckless, so it was almost wilful.²⁴

[32] It found that she ought to have known she could be dismissed because she couldn't perform her duties as a security guard while she was dozing and sleeping at work.²⁵ It concluded that she was disqualified from getting benefits.²⁶

[33] The General Division considered whether her actions were intentional in light of her disclosure that she had physical and mental health issues.²⁷ It found that her actions were voluntary and weren't caused by her health conditions. It explained that she could have taken reasonable steps to try to prevent herself from falling asleep at work.²⁸

[34] The Claimant's arguments to the Appeal Division amount to a disagreement with the outcome, but that isn't a reviewable error.

[35] The General Division is the trier of fact, and it was free to conclude based on the evidence before it that the Claimant lost her job due to her own misconduct. Its key findings are consistent with the evidence in the file.

[36] The Appeal Division has a limited mandate.²⁹ I can't intervene in order to settle a disagreement about the application of settled legal principles to the facts of a case.³⁰

²³ Listen to the audio recording of the General Division hearing at 14:25 to 15:35.

²⁴ See paragraph 23 of the General Division decision.

²⁵ See paragraphs 29–34 of the General Division decision.

²⁶ See paragraphs 35–36 of the General Division decision.

²⁷ See paragraphs 18–22 of the General Division decision.

²⁸ See paragraph 28 of the General Division decision.

²⁹ See section 58(1) of the DESD Act and *Marcia v Canada (Attorney General)*, 2016 FC 16, at paragraph 34.

³⁰ See *Garvey v Canada (Attorney General)*, 2018 FCA 118, at paragraphs 7–11 and *Quadir v Canada (Attorney General)*, 2018 FCA 21, at paragraph 14.

[37] Put another way, I can't reweigh the evidence in order to come to a different or more favourable conclusion for the Claimant.

[38] There is no arguable case that the General Division made an important error of fact in this case.³¹

– **There are no other reasons for giving the Claimant permission to appeal**

[39] I didn't find any key evidence that the General Division might have ignored or misinterpreted.³²

Conclusion

[40] Permission to appeal is refused. This means that the Claimant's appeal will not proceed. It has no reasonable chance of success.

Solange Losier
Member, Appeal Division

³¹ See section 58(1)(c) of the DESD Act.

³² See *Karadeolian v Canada (Attorney General)*, 2016 FC 615, which recommends doing such a review.