



[TRANSLATION]

Citation: *BG v Canada Employment Insurance Commission*, 2026 SST 268

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

# **Leave to Appeal Decision**

**Applicant:** B. G.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated  
February 3, 2026 (GE-25-3620)

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**Tribunal member:** Pierre Lafontaine

**Decision date:** March 27, 2026

**File number:** AD-26-170

## Decision

[1] Permission to appeal is refused. The appeal won't go ahead.

## Overview

[2] The Respondent (Commission) determined that the Applicant (Claimant) quit his job twice while working for the same employer. He could not go to work because he was incarcerated.

[3] The Commission found that the Claimant voluntarily left his job on July 21, 2024, and March 29, 2025, without just cause under the law. So, it wasn't able to pay him benefits.

[4] The Commission upheld the initial decisions on reconsideration. The Claimant appealed to the Tribunal's General Division.

[5] The General Division found that the Claimant lost his job twice because he didn't show up to do his work. Because he was incarcerated, he could not go to work. It found that, by his actions, the Claimant could not meet an essential condition of his employment contract because he could not go to work. The General Division found that the Claimant lost his job because of this. It found that the Claimant lost his job because of misconduct.

[6] The Claimant is now asking the Appeal Division for permission to appeal the General Division decision. He argues that the General Division made an error of law.

[7] On March 16, 2026, I wrote to the Claimant to ask him to explain in detail why he was appealing the General Division decision. He answered on March 26, 2026. The Claimant argues that the General Division made an error of jurisdiction and law by deciding the issue of misconduct without the power to do so and by misapplying the law.

[8] The Claimant also argues that there was no misconduct given his acquittal, and that, even if there was, it was in no way related to his work.

[9] I have to decide whether there is an arguable case that the General Division made a reviewable error based on which the appeal has a reasonable chance of success.

[10] I am refusing permission to appeal because the Claimant hasn't raised a ground of appeal based on which the appeal has a reasonable chance of success.

## **Issue**

[11] Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?

## **Analysis**

[12] The law specifies the only grounds of appeal of a General Division decision.<sup>1</sup> These reviewable errors are the following:

1. The General Division hearing process wasn't fair in some way.
2. The General Division didn't decide an issue it should have decided. Or it decided something it didn't have the power to decide.
3. The General Division based its decision on an important error of fact.
4. The General Division made an error of law when making its decision.

[13] An application for permission to appeal is a preliminary step to a hearing on the merits. It is an initial hurdle for the Claimant to meet, but it is lower than the one that must be met at the hearing of the appeal on the merits. At the permission to appeal stage, the Claimant doesn't have to prove his case. Instead, he must establish that his appeal has a reasonable chance of success. In other words, he has to show that there is arguably some reviewable error based on which the appeal might succeed.

[14] I will give permission to appeal if I am satisfied that at least one of the Claimant's stated grounds of appeal gives the appeal a reasonable chance of success.

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<sup>1</sup> See section 58(1) of the *Department of Employment and Social Development Act*.

**Does the Claimant's appeal have a reasonable chance of success based on a reviewable error the General Division may have made?**

[15] The Claimant argues that the General Division made an error of jurisdiction and law by deciding the issue of misconduct without the power to do so and by misapplying the law.

[16] The Claimant also argues that there was no misconduct given his acquittal, and that, even if there was, it was in no way related to his work.

[17] The Federal Court of Appeal has indicated that the concepts of "dismissal for misconduct" and "voluntarily leaving without just cause" are rationally linked together because they both refer to situations where the loss of employment results from a deliberate action of the employee. The Court has held that the General Division's finding can rest on either of the two grounds of disqualification to the extent that it is supported by the evidence.<sup>2</sup>

[18] The General Division found that the Claimant lost his job twice because he didn't show up to do his work. Because he was incarcerated, he could not go to work. It found that, by his actions, the Claimant could not meet an essential condition of his employment contract because he could not go to work.

[19] The General Division found that the Claimant lost his job because of misconduct.

[20] The evidence shows that the Claimant stopped going to work twice after being incarcerated following arrests.<sup>3</sup> This meant that he could no longer work according to the established schedule, which is a breach of an implied or explicit obligation in his employment contract. This amounts to misconduct under the law.

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<sup>2</sup> See *Canada (Attorney General) v Borden*, 2004 FCA 176 at para 6.

<sup>3</sup> See GD3A-42, GD3B-36: The employer stated that the Claimant's alleged actions amounted to spousal abuse, which was contrary to company values. See GD7-6: The Claimant expressed a desire to go to therapy. See GD7-9: The spouse says that she doesn't know whether she will get back with the Claimant if he isn't going to therapy.

[21] It is important to note that the Claimant's misconduct is that he didn't go to work, which is related to his employment, and not the acts he was incarcerated for.

[22] It is well-established case law that a claimant who can't, by their own actions, provide the services required by the employer under their employment contract, and loses their job as a result, can't have others assume the risk of their unemployment.<sup>4</sup>

[23] After reviewing the appeal file, the General Division decision, and the Claimant's arguments in support of his application for permission to appeal, I have no choice but to find that the appeal has no reasonable chance of success.

## **Conclusion**

[24] Permission to appeal is refused. The appeal won't go ahead.

Pierre Lafontaine  
Member, Appeal Division

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<sup>4</sup> See *Canada (Attorney General) v Borden*, 2004 FCA 176; *Canada (Attorney General) v Lavallée*, 2003 FCA 255; and *Canada (Attorney General) v Brissette*, [1994] 1 FC 684, 1993 CanLII 3020 (FCA).