



Citation: *GJ v Canada Employment Insurance Commission*, 2022 SST 997

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

# **Leave to Appeal Decision**

**Applicant:** Grace Jeon

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** General Division decision dated July 27, 2022  
(GE-22-1001)

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**Tribunal member:** Melanie Petrunia

**Decision date:** October 10, 2022

**File number:** AD-22-630

## Decision

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

## Overview

[2] The Applicant, G. J. (Claimant) was dismissed from her job because she did not comply with her employer's Covid-19 vaccination policy. She applied for employment insurance (EI) regular benefits. The Respondent, the Canada Employment Insurance Commission (Commission), decided that the Claimant lost her job due to her own misconduct and was disentitled to receive EI benefits.

[3] The Claimant appealed to the Tribunal's General Division. The General Division dismissed the Claimant's appeal. It found that the Claimant lost her job because she did not comply with the employer's vaccination policy. It found that this was misconduct under the law.

[4] The Claimant now wants to appeal the General Division decision to the Tribunal's Appeal Division. She argues that the General Division made an error of law.

[5] I have to decide whether there is some reviewable error of the General Division on which the appeal might succeed. I am refusing leave to appeal because the Claimant's appeal has no reasonable chance of success.

## Issue

[6] Is there an arguable case that the General Division made an error of law?

## Analysis

[7] The legal test that the Claimant needs to meet on an application for leave to appeal is a low one: Is there any arguable ground on which the appeal might succeed?<sup>1</sup>

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<sup>1</sup> This legal test is described in cases like *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12 and *Ingram v Canada (Attorney General)*, 2017 FC 259 at para 16.

[8] To decide this question, I focused on whether the General Division could have made one or more of the relevant errors (or grounds of appeal) listed in the Department of Employment and Social Development Act (DESD Act).<sup>2</sup> An appeal is not a rehearing of the original claim. Instead, I must decide whether the General Division:

- a) provided a fair process;
- b) decided all the questions that it had to decide, without deciding questions that were beyond its powers to decide;
- c) based its decision on an important factual error;<sup>3</sup> or
- d) misinterpreted or misapplied the law.<sup>4</sup>

[9] Before the Claimant can move on to the next stage of the appeal, I have to be satisfied that there is a reasonable chance of success based on one or more of these grounds of appeal. A reasonable chance of success means that the Claimant could argue her case and possibly win.

[10] I will grant leave if I am satisfied that at least one of the Claimant's stated grounds of appeal gives the appeal a reasonable chance of success. It is a lower threshold than the one that must be met when the appeal is heard on the merits later on in the process if leave to appeal is granted.

[11] I should also be aware of other possible grounds of appeal not precisely identified by the Claimant.<sup>5</sup>

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<sup>2</sup> DESD Act, s 58(2).

<sup>3</sup> The language of section 58(1)(c) actually says that the General Division will have erred if it bases its decision on a finding of fact that it makes in a perverse or capricious manner or without regard for the material before it. The Federal Court has defined perverse as "willfully going contrary to the evidence" and defined capricious as "marked or guided by caprice; given to changes of interest or attitude according to whim or fancies; not guided by steady judgment or intent" *Rahi v Canada (Minister of Citizenship and Immigration)* 2012 FC 319.

<sup>4</sup> This paraphrases the grounds of appeal.

<sup>5</sup> *Karadeolian v Canada (Attorney General)*, 2016 FC 615; *Joseph v Canada (Attorney General)*, 2017 FC 391.

## **Does the Claimant raise some reviewable error upon which the appeal might succeed?**

[12] In her application for leave to appeal, the Claimant states that the General Division made an error of law. She argues that the General Division misinterpreted the law and failed to consider whether she had just cause for her conduct.<sup>6</sup>

[13] The Claimant argues that section 30 of the EI Act, which was referenced by the General Division, states:

A claimant is disqualified from receiving any benefits if the claimant lost their employment because of their misconduct or voluntarily left their employment without just cause...

[14] The Claimant states that she made arguments to the General Division that supported that there was just cause for actions she took. She argues that the EI Act sets out certain circumstances where just cause for voluntarily leaving employment exists.<sup>7</sup>

[15] The General Division considered the reason for the Claimant's dismissal. It found that she was dismissed for failing to comply with the employer's Covid-19 vaccination policy.<sup>8</sup> It then considered the terms of the policy, including the requirement that employees provide documentation confirming all required vaccine doses by October 21, 2021, and the available medical and human rights exemptions.<sup>9</sup>

[16] The General Division determined that the policy was communicated to the Claimant.<sup>10</sup> It found that the Claimant was aware of the consequences of not complying: initially, that she would be put on an unpaid leave of absence and, later, that she would be terminated.<sup>11</sup>

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<sup>6</sup> AD1-4

<sup>7</sup> See AD1-4 where the Claimant references section 29(c) of the EI Act.

<sup>8</sup> General Division decision at para 12.

<sup>9</sup> General Division decision at paras 16 and 17.

<sup>10</sup> General Division decision at para 20.

<sup>11</sup> General Division decision at para 25.

[17] The General Division considered whether there was a reason that the Claimant could not comply with the policy. It found that the Claimant did not prove she was exempt from the policy.<sup>12</sup> The General Division also considered other arguments raised by the Claimant that it determined it did not have the authority to decide.<sup>13</sup>

[18] The General Division properly stated and applied the law. It found that the Commission proved that the Claimant lost her job because of her misconduct and that she was disqualified from receiving EI benefits.<sup>14</sup>

[19] The arguments that the Claimant raises in her application for leave to appeal are relevant to situations when a claimant voluntarily leaves their employment, not when they are dismissed for misconduct. The General Division did not err in law by failing to consider whether there was just cause for the Claimant's conduct. The General Division did not misinterpret section 30 of the EI Act.

[20] I have found that there is no arguable case that the General Division made an error of law. I am not satisfied that the appeal has a reasonable chance of success.

[21] I have also considered other grounds not raised by the Claimant. After reviewing the record and listening to the hearing before the General Division, I have not identified any important factual errors or any errors of jurisdiction. There is no arguable case that the General Division failed to provide a fair process.

## **Conclusion**

[22] Permission to appeal is refused. This means that the appeal will not proceed.

Melanie Petrunia  
Member, Appeal Division

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<sup>12</sup> General Division decision at para 41.

<sup>13</sup> General Division decision at para 49.

<sup>14</sup> General Division decision at para 50.