



**EDITOR'S NOTE:** This document is subject to editorial revision before its reproduction in final form in the *Federal Courts Reports*.

## EMPLOYMENT INSURANCE

Judicial review of Social Security Tribunal, Appeal Division decision denying leave to appeal General Division's refusal to overturn denial of employment insurance (EI) benefits — Applicant former employee of Lakeridge Health hospital — Suspended from his employment, ultimately terminated, because failing to comply with employer's policy regarding COVID-19 vaccinations, testing — Lakeridge Health not having its own policy, but rather followed rules set out in Directive 6, issued by Ontario's Chief Medical Officer of Health pursuant to *Health Protection and Promotion Act*, R.S.O. 1990, c. H-7 — Applicant participated in education session regarding vaccines pursuant to Directive but did not get vaccinated or provide antigen test results as required — Put on unpaid leave, dismissed from employment as a result — Applied for employment insurance in October 2021 — Canada Employment Insurance Commission (Commission) denied application, finding that applicant had lost job due to misconduct — General Division assessed two issues: why applicant had been suspended, whether law considered that reason to be misconduct, as that term understood for purposes of administering EI benefits — Accepted employer's evidence, found applicant's denial that he had been notified of Directive's requirements, that he had never refused antigen testing to be lacking in credibility — Based on this, General Division found applicant committed misconduct under law — Appeal Division found that applicant had not demonstrated that his appeal had reasonable chance of success — Noted that General Division could not make ruling in relation to misconduct based on other legislation cited by applicant — Found that fact applicant having avenues of recourse under other legislation not undermining General Division's finding that Commission had proven that employer dismissed applicant because of his misconduct, therefore was not entitled to EI benefits — Whether Appeal Division's decision denying applicant leave to appeal reasonable — While applicant frustrated that decision makers not addressing legal or factual issues that he raised, i.e. bodily integrity, consent to medical testing, safety, efficacy of COVID-19 vaccines or antigen tests, this not making decision of Appeal Division unreasonable — Appeal Division properly summarized law applying to this case, in particular its limited role in making decision whether to grant leave to appeal from decision of General Division — Made no factual errors that might justify overturning its decision — Appeal Division's decision, like that of General Division, rooted in interpretation of term "misconduct" — Misconduct not requiring that the employee act with malicious intent — Applicant raised none of the reviewable errors listed in *Department of Employment and Social Development Act*, S.C. 2005, c. 34, s. 58(1) that could justify the granting of his appeal — *AL v. Canada Employment Insurance Commission*, 2022 SST 1428 distinguished herein — General Division, Appeal Division having important, but narrow, specific role to play in legal system — In this case, that role involved determining why applicant dismissed from his employment, whether that reason constituting "misconduct" — That is what they did — Application dismissed.

CECCHETTO V. CANADA (ATTORNEY GENERAL) (T-1665-22, 2023 FC 102, Pentney J., reasons for judgment dated January 23, 2023, 20 pp.)