Federal Court  Cour fédérale

Date: 20250108

Docket: T-498-23

Citation: 2025 FC 46

Ottawa, Ontario, January 8, 2025

PRESENT: Mr. Justice O'Reilly

BETWEEN:

MICHAEL HEY

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] In 2021, during the COVID-19 pandemic, Mr Michael Hey was suspended from his job as a bus driver on Salt Spring Island, British Columbia for failing to comply with his employer's vaccination policy. Mr Hey regarded the vaccination program as an experiment in which employees were compelled to test a dangerous medication.

[2] Mr Hey applied for employment insurance benefits but the Canada Employment Insurance Commission denied his claim, concluding that he had lost his job through his own

misconduct. The General Division of the Social Security Tribunal upheld the Commission's decision. Mr Hey sought to appeal the General Division's decision, but the Appeal Division of the Tribunal denied him leave to appeal. The Appeal Division found that Mr Hey's appeal had no reasonable chance of success.

[3] Mr Hey submits that the Appeal Division's decision was unreasonable on numerous grounds, but primarily because it mischaracterized his submissions and failed to address his argument that the General Division had wrongly assumed that the medication in question was safe. He asks me to quash the Appeal Division's decision and order another panel to reconsider his appeal.

[4] I can find no basis for overturning the Appeal Division's decision. The Appeal Division's conclusion that Mr Hey's appeal stood no reasonable chance of success was not unreasonable in light of the applicable law and the facts before it. The Appeal Division can entertain an appeal only if there has been breach of natural justice, a lack of jurisdiction, an error of law, or a serious factual error unsupported by the evidence (*Department of Employment and Social Development Act*, SC 2005, c 34, ss 58(1)-(2); see Annex for provisions cited). Its conclusion that none of those conditions existed here was not unreasonable. Therefore, for the reasons below, I must dismiss this application for judicial review.

II. The Appeal Division's Decision

[5] The merits of the Appeal Division's decision must be assessed in the context of the prior proceedings before the General Division.

[6] The General Division found that the Commission had properly concluded that Mr Hey was not entitled to employment insurance because he had been suspended for failing to comply with his employer's vaccination policy and that his refusal amounted, legally speaking, to "misconduct." "Misconduct" in this context includes wilful behaviour that the employee knows or should know would prevent them from carrying out their duties and could result in dismissal. The General Division found that Mr Hey's conduct met this definition. It went on to explain that it had no jurisdiction to rule on the safety of the vaccine, the ability of his employer to issue a vaccination policy, or the question of whether his rights had been violated – other tribunals might have those powers, but not the Social Security Tribunal.

[7] Before the Appeal Division, Mr Hey argued that the General Division had exhibited bias against him by failing to consider whether his allegations about the nature of the vaccination policy might be true. He characterized the General Division's decision as exhibiting "blind faith in the infallibility of government and of the healthcare establishment." Similarly, he contended that the General Division's use of the terms "vaccine" and "vaccination policy" manifested a personal bias against his arguments because the member of the General Division was not qualified to determine whether the medication in issue was a vaccine or not. Nor, in his view, was she capable of determining whether his concerns about safety were legitimate.

[8] The Appeal Division reviewed the law on the tests for bias and reasonable apprehension of bias and concluded that those tests were not met. It found that the General Division's use of the terms "vaccine" and "vaccination policy" did not display any bias. The General Division may not have been in a position to decide whether the labels "vaccine" and "vaccination policy" were

apt in the circumstances, but it was using those terms merely for ease of reference. Similarly, the General Division was not required to rule on the safety or efficacy of the vaccine.

[9] With respect to Mr Hey's alleged "misconduct," the Appeal Division found that the General Division did not have a mandate to review the merits or reasonableness of the employer's policy. It simply had to decide whether Mr Hey had failed to comply with that policy.

[10] Finally, the Appeal Division considered Mr Hey's argument that the General Division had mischaracterized some of the evidence and his submissions. For example, Mr Hey says that he argued before the General Division that there must be limits on an employer's power to change the conditions of employment. However, the General Division summarized his argument to be that an employer cannot change the terms of employment at all. In addition, the General Division noted that Mr Hey had not sought an exemption from the vaccination policy, but Mr Hey points out that he could not have obtained an exemption because he was not qualified for one – the question of an exemption was irrelevant. Finally, while the General Division had attributed to Mr Hey the term "lethal medication" to describe the vaccine, Mr Hey claims that he had described the vaccine merely as a "potentially lethal medication."

[11] In response to Mr Hey's submissions on this point, the Appeal Division found that none of these alleged errors or mischaracterizations affected the outcome. For example, nothing in the *Employment Insurance Act*, SC 1996, c 23 limits an employer's ability to change the terms of employment or permits the General Division to consider the reasonableness of any changes in

employment conditions. Further, while the reason why Mr Hey did not seek an exemption may have been irrelevant, the fact remained that he was not exempt from his employer's policy. Finally, whether the term properly attributed to Mr Hey was "lethal" or "potentially lethal," the choice of words was inconsequential because the safety of the vaccine was not a relevant consideration.

[12] On these grounds, the Appeal Division concluded that Mr Hey should not be granted leave to appeal the decision of the General Division because his appeal had no reasonable chance of success.

III. Was the Appeal Division's Decision Unreasonable?

[13] Mr Hey submits that the Appeal Division's decision was unreasonable because, in essence, it failed to grapple with the substance of his arguments.

[14] I disagree.

[15] In his submissions to me, Mr Hey expressed many unequivocal opinions about the COVID-19 vaccine and the policies that were issued during the pandemic, including that:

- He was suspended for refusing to participate in a dangerous and unethical medical experiment that amounts to a crime against humanity and has resulted in mass murder;
- The medications contained in the vaccine increase the likelihood of someone contracting COVID-19;
- Vaccines were developed by the same entities that designed the virus;
- The primary cause of COVID-19 deaths is the vaccine – deaths from the vaccine exceed deaths from the virus by a factor of 100;

- Safe and effective treatment for COVID-19 already existed in the form of Ivermectin;
- Vaccination policies were developed in order to inject people with experimental drugs, not to promote health; and
- Health officials who claimed the vaccine was safe were lying.

[16] Mr Hey maintains that his opinions are widely accepted.

[17] In respect of the rulings on his entitlement to employment insurance, Mr Hey contends that the General Division's position that it had no authority to rule on the reasonableness of his employer's vaccination policy is belied by its own decision, in which it said: "I don't find . . . the employer updating its policy as it states, to keep its employees, customers and communities it serves safe is unreasonable."

[18] Mr Hey also questions the purpose of investing a tribunal with such limited jurisdiction; the result is that it cannot engage in meaningful decision-making. The suggestion that there are alternative agencies in which he could raise his concerns is, in his view, unrealistic since an ordinary citizen does not have the time or resources to pursue multiple avenues of redress. He argues that the role of the Social Security Tribunal should be to deal with any human rights violations that arise from a valid claim to benefits.

[19] On the issue of bias, Mr Hey questions whether either the General Division or the Appeal Division could apply a standard based on what a reasonable and right-minded person would conclude given that neither of the members who considered his case could be characterized that way. In Mr Hey's view, they were neither reasonable nor right-minded given that they refused to

find that his employer's policy was unreasonable. Further, they failed to investigate Mr Hey's allegation that the vaccines were unsafe, and indeed murderous.

[20] Mr Hey disputes that he engaged in "misconduct." His employer never characterized his conduct this way. Indeed, his employer was sympathetic and hired him back as soon as possible. Further, he claims that the broad definition of "misconduct" on which the Appeal Division relied facilitates the "theft of EI benefits" in order to punish those employees who were unwilling to undergo a medical experiment.

[21] Mr Hey recognizes the body of jurisprudence holding that similarly-situated employees are not entitled to employment insurance benefits. However, he maintains that his case is different because it raises the question of whether an employer can conduct medical experimentation on its employees as a condition of employment. He points to the Nuremburg Code as a source for the principle that medical experimentation can be conducted only with the informed voluntary consent of human subjects. He asked the Appeal Division to consider this argument, but it failed to do so.

[22] Mr Hey is aware that the Court can consider only the evidence that was before the decision-makers below. Nevertheless, he asks the Court simply to acknowledge that the medications in issue could be dangerous, and to accept that the Nuremburg Code embodies basic moral principles that apply here. He specifically asks me to rule on whether the Nuremburg Code was violated.

[23] Mr Hey is entitled to his opinions about COVID-19 and vaccines. But, however sincerely held his beliefs may be, they cannot invest the Social Security Tribunal with a role that Parliament did not grant it. The Tribunal's jurisdiction is confined to determining whether the laws relating to the granting of employment insurance have been respected. Here, the Commission concluded that Mr Hey was not legally entitled to benefits and the General Division found that the Commission's decision was not unreasonable on the facts and the law. The Appeal Division concluded that Mr Hey's appeal from that decision had no reasonable chance of success. Each decision-maker performed its assigned role.

[24] Mr Hey queries the value of having an administrative apparatus with such limited jurisdiction and powers, but the statute in issue, the *Department of Employment and Social Development Act,* reflects the will of Parliament. It is beyond the powers of the Social Security Tribunal and this Court to exceed their legislative authority or to grant remedies the law does not recognize or permit.

[25] I do agree with Mr Hey that the General Division contradicted itself when it commented on the reasonableness of his employer's policy at the same time as it said it had no authority to comment on it. But that isolated statement did not amount to grounds for overturning its decision.

[26] I also agree with Mr Hey that the term "misconduct" might be unsuitable in some circumstances, including in his case. Indeed, I do not think it is an apt term to describe Mr Hey's behaviour. Mr Hey made a conscientious objection to an employment policy he could not abide

by. True, his conduct falls within the accepted definition of "misconduct" in the area of employment insurance – wilful behaviour carried out by an employee who knows that there is a risk of dismissal for engaging in it. But this kind of conduct could simply be called "non-compliance," a more neutral label that more accurately captures the employee's motivation and response, and avoids the stigma associated with the term "misconduct." I would characterize Mr Hey's behaviour as conscientious, indeed thoughtful, non-compliance. However, there was nothing unreasonable about the use of the term "misconduct" by the General Division and the Appeal Division.

[27] There is no basis for Mr Hey's allegations of bias. His real complaint is that the Tribunal members refused to find his employer's policy unreasonable and to rule on the safety of the vaccine. Neither of those issues was within the jurisdiction of the General Division or the Appeal Division to decide.

[28] Finally, on the question of whether the vaccination policy in question amounted to medical experimentation forbidden by the Nuremburg Code, I find that this, too, is an issue that fell outside the jurisdiction of the Tribunals below. Nor is it an issue that I can decide. Mr Hey's characterization of his employer's policy is a matter of personal opinion and philosophy that cannot be validated, or even meaningfully litigated, in the narrow context of a claim for employment insurance benefits. Even so, Mr Hey has been given multiple opportunities to present his perspective and each decision-maker has considered it carefully and respectfully. In addition, counsel for the Attorney General of Canada, Ms Sandra Doucette, commendably

presented grounds for upholding the Tribunals' decisions without disparaging Mr Hey's opinions.

[29] Accordingly, I must conclude that the Appeal Division's decision to deny Mr Hey leave to appeal was not unreasonable – his appeal stood no reasonable chance of success.

IV. Conclusion and Disposition

[30] The Appeal Division's conclusion that Mr Hey's appeal stood no reasonable chance of success was not unreasonable based on the facts and the law. I must, therefore, dismiss this application for judicial review. There is no order as to costs.

JUDGMENT IN T-498-23

THE COURT'S JUDGMENT is that the application for judicial review is dismissed, without costs.

"James W. O'Reilly"
Judge

ANNEX

Department of Employment and Social Development Act, SC 2005, c 34

Grounds of appeal — Employment Insurance Section

58 (1) The only grounds of appeal of a decision made by the Employment Insurance Section are that the Section

(a) failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

(b) erred in law in making its decision, whether or not the error appears on the face of the record; or

(c) based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

Criteria

(2) Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.

Loi sur le ministère de l'emploi et du développement social, LC 2005, c 34

Moyens d'appel — section de l'assurance-emploi

58 (1) Les seuls moyens d'appel d'une décision rendue par la section de l'assurance-emploi sont les suivants :

a) la section n'a pas observé un principe de justice naturelle ou a autrement excédé ou refusé d'exercer sa compétence;

b) elle a rendu une décision entachée d'une erreur de droit, que l'erreur ressorte ou non à la lecture du dossier;

c) elle a fondé sa décision sur une conclusion de fait erronée, tirée de façon abusive ou arbitraire ou sans tenir compte des éléments portés à sa connaissance.

Critère

(2) La division d'appel rejette la demande de permission d'en appeler si elle est convaincue que l'appel n'a aucune chance raisonnable de succès.

FEDERAL COURT

SOLICITORS OF RECORD

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