

FORM 301 Rule 301

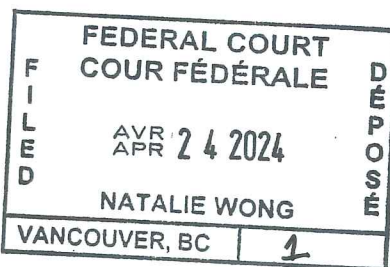
Notice of Application

Court File No.

FEDERAL COURT

BETWEEN:

DMYTRO PONOMAROV



Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

APPLICATION FOR JUDICIAL REVIEW PURSUANT TO SECTION 18.1
OF THE FEDERAL COURTS ACT

Notice of Application

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant.
The relief claimed by the applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at (place where Federal Court of Appeal (or Federal Court) ordinarily sits).

Federal Court Vancouver DP

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the Federal Courts Rules and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the Federal Courts Rules, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN
IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

April 24, 2024

Issued by: **NATALIE WONG**
REGISTRY OFFICER
~~**AGENT DU GREFFE**~~
(Registry Officer)

Address of local office:

Pacific Centre
P.O. Box 10065
701 West Georgia Street
Vancouver, British Columbia
V7Y 1B6

Courts Administration Service
P.O. Box 10065, 3rd Floor
701 West Georgia Street
Vancouver, B.C. V7Y 1B6

TO:

the Attorney General of Canada
Office of the Deputy Attorney General of Canada
284 Wellington Street
Ottawa ON K1A 0H8

AND TO:

Social Security Tribunal of Canada
PO Box 9812
Station T
Ottawa, ON K1G 6S3

APPLICATION

This is an application for judicial review in respect of:

Social Security Tribunal of Canada (SST),

regarding the Leave to Appeal Decision of Social Security Tribunal of Canada Appeal Division (**AD**) from March 26, 2024 pursuant to section 58(2) of the Department of Employment and Social Development Act (S.C. 2005, c. 34) to refuse permission for the Applicant to appeal the Decision of Social Security Tribunal of Canada General Division (**GD**) – Employment Insurance Section from October 27, 2023.

THE APPLICANT makes an Application for:

1. A declaration that GD's jurisdiction is limited to dealing with the decision that the Commission has made and, in Applicant's case, the GD went outside of the subject matter it was called upon to consider, beyond its jurisdiction;
2. a declaration that the GD do not have jurisdiction to declare a deemed termination of an employment contract as it was done in Applicant's case;
3. a declaration that the existing evidence shows that the Applicant was terminated by the employer and did not resign and that the AD and GD based their decisions on an important error of fact;
4. a declaration that the Decisions of the GD and AD are written in perverse or capricious manner and there is a reasonable apprehension of the bias on behalf of the tribunal members of the AD and GD;

5. in the alternative, an Order setting aside the AD's Leave to Appeal Decision and remitting the matter back to the SST to reconsider the AD's Decisions with instructions from the Federal Court;
6. costs;
7. such other order as this Honourable Court may deem appropriate.

THE GROUNDS FOR THE APPLICATION are:

1. The Applicant worked as a Financial Systems Officer with the Ministry of Children and Family Development. The official employer was BC Public Service Agency and his union was BCGEU.
2. The employer unilaterally imposed new essential job requirements. It was a new policy, a mandatory vaccination policy (MVP).
3. The Applicant found that the MVP was unacceptable for him and informed the employer that he would not accept these changes.
4. As the Applicant refused to accept the MVP, he was expecting that his employment should be terminated by the employer (with eligible severance package). He informed the employer about this. However, his attempt to negotiate a termination was unsuccessful.
5. The employer prohibited the Applicant from going to work and stopped his salary and all benefits, calling this a three month leave without pay. The Applicant explicitly refused this unpaid leave, but this fact was ignored. He submitted his first grievance to the union.

6. After four and a half months without salary and benefits, the employer terminated his employment for just cause. The Applicant submitted another grievance to the union.
7. Notice of Termination from September 22, 2022 from Applicant's employer is evidence that the Applicant has been terminated by the employer. There was no disagreement regarding this fact between the employer and the Applicant. The question of an resignation never was raised by the Applicant.
8. The Applicant submitted his application for Employment Insurance, putting forward that it was a case of constructive dismissal. The EI Commission (CEIC) ignored the information and evidence from the application for EI and presented his case as if he accepted the new policy but did not follow it. The EI benefits were denied; the reason: misconduct.
9. The Applicant submitted an appeal to the SST GD-EIS to challenge the decision of the CEIC.
10. At the GD's hearing (at the time when the Applicant was providing arguments why his case was a case of constructive dismissal) the Tribunal Member informed the Applicant that she was making a finding of facts that he quit. As she explained, the law (Employment Insurance Act) allowed her to do this. She stated that she considered his email communication with his manager (where the Applicant tried to negotiate his termination by the employer after he refused the MVP) as a resignation letter. And, now, it was a voluntary leaving application for EI rather than a dismissal application for EI.

11. In the Decision of the GD from October 27, 2023 it was stated that the appeal was denied due to voluntary leaving without cause.
12. The approach, that is used to prove that the Applicant has resigned, that is used in GD's Decision (and it is repeated in AD's Decision) is not as straightforward as the one used during the hearing.
13. At fist, it is stated that the GD is not bound by how the Commission decided the employment relationship terminated. This is supported by referencing five cases from the Federal Court and the Federal Court of Appeal. All these case are related to the situation when the employer and employee are stating different cause for termination of employment. It is firing and voluntary leaving without cause; in both cases the EI benefits should be denied. This is why in those cases the GD is not bound by how the Commission decided the employment relationship terminated, it makes no difference. So, these cases are not relevant to the Applicant's case. The GD and the AD are trying to justify their actions by referencing irrelevant cases from FC and FCA.
14. Next, the GD (and the AD) substituted term "voluntarily left" with some unclear new term "initiated the termination of employment", proceeded reinforce the new term using irrelevant elements (elements the GD referred to as "evidence"), and then switched back to "voluntarily left"; now, the GD determined that the resignation is "proved".
15. The fact of the resignation of the Applicant was created in the AD and the GD Decisions only by the use of perverse capricious language.

16. The jurisdiction of the GD is limited to dealing with the decision that the Commission has made. By going away from the question of misconduct, that the Applicant was challenging at the appeal, the GD departed from the subject matter it was called upon to consider.
17. The GD went beyond its jurisdiction by declaring that the Applicant resigned. The Employment Insurance Act does not provide this power.
18. A resignation must be clear and unequivocal. To be clear and unequivocal, the resignation must objectively reflect an intention to resign, or conduct evidencing such an intention.
19. There is only evidence that Applicant's employment was terminated by the employer. Which means that the AD and GD have based their decisions on an important error of fact.

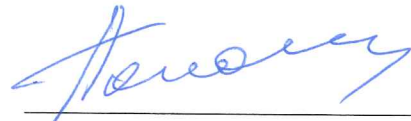
This Application will be supported by the following material:

1. Leave to Appeal Decision of Social Security Tribunal of Canada Appeal Division from March 26, 2024;
2. Decision of Social Security Tribunal of Canada General Division – Employment Insurance Section from October 27, 2023;
3. Notice of Termination of Employment from Ministry of Children and Family Development from September 22, 2022; and
4. such further and other evidence as the Applicant may advise and this Honourable Court may permit.

The Applicant requests Social Security Tribunal of Canada to send a certified copy of the record that is not in the possession of the Applicant but is in the possession of the Social Security Tribunal of Canada to the Applicant and to the Registry:

1. all documents, including but not limited to all letters, emails, submissions, and any other records that were before the General Division and the Appeal Division or prepared by the General Division and Appeal Division in relation to this matter; and
2. Such further and other material as may be requested.

April 24, 2024



Dmytro Ponomarov
305-223 Mountain Hwy
North Vancouver, BC V7J 3V3

Tel: 604-988-5102
Email: dmitryp09@gmail.com