

BETWEEN:

FEDERAL COURT

XIANGJIN SHEN

and

Applicant

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	Sept. 20, 2023 20 sept 2023	
Josephine Chan		
Toronto, ON	1	

THE ATTORNEY GENERAL OF CANADA

Respondent

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 requested by the Applicant. The Applicant requests that this Application be heard in person before the Federal Court at Toronto.

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 Court 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 Court 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.

September 20, 2023

Issued by: "Jena Russell"

Address of local office: Federal Court
180 Queen Street West, Suite 200
Toronto, Ontario M5V 3L6

To: The Attorney General of Canada
Justice Building, 4th Floor
284 Wellington Street
Ottawa, Ontario K1A 0H8

APPLICATION

This is an Application for judicial review in respect of a Decision of the Appeal Division of the Social Services Tribunal given on August 21, 2023 by Member Melanie Petrunia, refusing the Applicant leave to appeal.

The Applicant asserts that the Appeal Division Member erred in law and acted unreasonably in her Decision by failing to find that the General Division Member erred in law and denied the Applicant procedural fairness and the principles of natural justice.

THE APPLICANT MAKES APPLICATION FOR:

1. An Order setting aside the Decision of the Appeal Division made August 10, 2023, and finding that the Applicant is entitled to EI benefits.
2. Such further and other Order as is determined to be fit and just, including returning the matter to the SST for any determination that is deemed necessary before a differently constituted Member or Members.
3. Awarding the Applicant her costs of the Application.

THE GROUNDS FOR THE APPLICATION ARE:

1. Section 18.1 of the Federal Courts Act, R.S.C. 1985, c.F-7.
2. The Appeal Division of the Social Services Tribunal erred in law, and ruled in an unreasonable manner, in failing to apply or misapplying the binding Supreme Court of Canada decision in *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27, which held that the interpretation of language in benefits-conferring legislation is to be resolved with the most broad and liberal construction

favourable to the claimant. In the subject case the statutory language of the Employment Insurance Act pertains to the meaning of misconduct.

3. The Appeal Division of the SST erred in law, and ruled in an unreasonable manner, in construing and applying the legal test for determining misconduct in an unduly narrow, inappropriate and inaccurate fashion, and by failing to assess correctly whether the alleged misconduct arose from an express or implied duty of the employment contract as required in the legal precedent of *Canada v. Lemire* 2010 FCA 314.

4. The Appeal Division of the SST erred in law, and ruled in an unreasonable manner, by failing to give any analysis to the conduct of the employer, and by failing to follow the legal precedent of *Astolfi v. Canada* 2020 FC 30, and more particularly by not giving consideration to the employer's abrogation of its legal and contractual obligations to the employee and by failing to observe principles of natural justice and procedural fairness on the basis of medical accommodation where a circumstance of frustration existed.

5. The Appeal Division of the SST erred in law, and ruled in an unreasonable manner, by not accepting the jurisdiction to apply principles of employment law, including the failure to consider and to apply the legal precedent of *Re Lumber & Sawmill Workers' Union, Local 2537 v. KVP Co. Ltd.* [1965] Labour Arbitration Cases Vol.16 , P. 73, in particular by failing to analyze whether an employer has an unfettered right to impose an employment policy on an employee, and whether an alleged deliberate abrogation of the policy is sufficient for a finding of misconduct.

6. The Appeal Division of the SST erred in law, and ruled in an unreasonable manner, by declining to review the factual findings of the General Division and in not properly analyzing whether there existed perverse and capricious findings on the evidence, and by not analyzing whether this amounted to a denial of the rights of procedural fairness and natural justice.

7. Such further and other grounds as the Applicant may identify and present, and the Honourable Court permit.

IN SUPPORT OF THIS APPLICATION THE APPLICANT WILL RELY ON THE FOLLOWING MATERIAL:

1. The Record before the Social Services Tribunal in the General Division and the Appeal Division
2. The Decision of the General Division dated May 4, 2023
3. The Decision of the Appeal Division denying Leave to Appeal dated August 21, 2023
4. Such further and other material as the Applicant may present and the Honourable Court permit.

Dated at Clinton, Ontario this 20th day of September, 2023.



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