

FEDERAL COURT

BETWEEN:

MARK J. DAGGETT

and

THE ATTORNEY GENERAL OF CANADA

Respondent

APPLICATION UNDER s18.1 of the *Federal Court Act*

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears on the following page.

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 Fredericton, New Brunswick.

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, where 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.

e-document		
F I L E D	FEDERAL COURT COUR FÉDÉRALE 20-March-2023 Tanya Smith	D É P O S É
St. John's, NL		1

Date: 20-March-2023

Original signed by
Tanya Smith
Registry Officer

Issued by: _____

(Registry Officer)

Address of local office:

82 Westmorland St.

Suite 100,

Fredericton, N.B.,

E3B-3L3

TO: Minister of Justice and Attorney General of Canada
c/o Deputy Attorney General of Canada
Office of the Deputy Attorney General of Canada
284 Wellington Street
Ottawa, Ontario
K1A 0H8

Application

This is an application for judicial review in respect of the decision of Neil Nawaz, tribunal member of the Appeal Division of the Social Security Tribunal ("Tribunal"), dated Feb 16 2022, Appeal No. AD-23-16, refusing the Applicant leave to appeal the decision of the General Division of the Tribunal with respect to the Applicant's eligibility of Employment Insurance Benefits. The decision was first communicated to the applicant on February 17th, 2023

February 17, 2023 Tribunal Number AD-23-16 Leave to Appeal Decision Refused

The applicant makes application for:

1. An Order setting aside the decision of the Tribunal Member and granting leave to appeal the General Division decision to the appeal Division of the Tribunal.
2. In the alternative, an Order setting aside the decision of the Tribunal Member and returning the matter to the Appeal Division of the Tribunal for redetermination by a different member with such directions as this Honorable Court considers appropriate.
3. Such other Order as Counsel may advise and this Honorable Court may permit.
4. Employment Insurance Benefits from December 05 2021 to July 05 2022

The grounds for the application are:

Federal courts act section 18.1(4)

- (a) Refuse to exercise its jurisdiction.
- (b) failed to observe procedural fairness.
- (c) erred in law in making a decision.
- (d) Based its decision on an erroneous finding of fact, that it made without regard for the material before it.
- (e) Acted by reason of fraudulent evidence.
- (f) Acted in any other way that was contrary to law -EI ACT

1. Application leave to Appeal SST general division

2. Leave to Appeal Decision from SST

The applicant requests social security *tribunal* to send a certified copy of the following material that is not in the possession of the applicant but is in the possession of the social security *tribunal* to the applicant and to the Registry: (*Specify the particular material.*) Application for EI Benefits & all other supporting documents submitted with the application. All documents pertaining to the denial of benefits, application of supporting documents for reconsideration, denial of

reconsideration, application to the SST general division and all supporting documents, denial of general division and all supporting documents.

3. The Applicant was told to go home upon entering work Monday November 29th 2021 that there was no work for him today and that he would be contacted when there was, he was Locked out from employment, fraudulent ROE was sent by the employer to Service New Brunswick. The Employer did not follow the employees terms of employment as per the Canadian Union of Employees collective agreement and was contrary to the terms of collective agreement binding all parties as to the terms and working conditions specifically specified under the agreement. Article 2 cupw collective agreement binding by all parties "which are subject to the terms of this collective agreement". No application request form for leave was signed or initiated by the employee requesting any leave. The employer may only grant or deny a leave based on operational requirement the have no means contractual to assign or apply it unilaterally. There was no Misconduct, disciplinary action taken as per articles of agreement that would require a 12 hour notice of interview, interview, and resulting conclusion. The employee did his job, as per his job and contractually binding agreement. The Applicant was sent home through not fault of his own.

4. The Applicant filed for Employment insurance benefits December 10th, 2021 starting date of November 28th 2021 was subsequently denied by employment insurance, reason off on "voluntary leave of absence requested by employee, not justified" which the employee did not request. The applicant forwarded additional information as per rules under Employment insurance where no result was given. The applicant contacted employment insurance 5 days after he was told he would hear back, when he was cut off of filing reports and told he would have to appeal.

5. The applicant sent through all levels of appeal in expiry of appeals and subsequent denials where the reason of denial at out set being "voluntary leave of absence requested by employee, not justified" to "Disciplinary Misconduct" where no discipline or misconduct occurred as per the applicants contract. At every level from application to appeal no submitted documentation provided by the applicant was considered, or as held as relevant by the employment insurance commission.

6. July 20th 2022 Social Security Tribunal file number GE-22-2379 commission Record Identifier 479300 confirmed receipt of Notice to appeal including documentation. Notice of Hearing received Oct 17th 2022, for November 15th, 2022 which was subsequently changed to November 22 2022 by the Tribunal. On the Tribunal Date of November 22 2022 the applicant gave testimony including contractual obligations, obligations of law, events and clear testimony, towards all past documentation given at every level of the appeals processes in a one hour and 15 minute testimony of factual documented information and chain of events, none of which was considered in the outcome of the tribunals finding

and conclusions upon denial date December 08th 2022 file number GE-22-2379. Contract, laws, and rights were simply disregarded as the Tribunal stated they could not speak to them. These were stated and brought forth by the applicant not to be spoken to or discarded but for the SST tribunal to recognize and follow in application of their policies and the law. At Tribunal outset as well both the employment commission and Canada Post were present in their electing not to contribute that the only person present for the hearing was the Applicant and Tribunal member Catherine Shaw. The applicant being the sole individual should have simply been awarded approval as the other parties failed to bother appearing.

7. On request to appeal Decision date Feb 16th, 2022 Neil Nawaz tribunal member file number AD-23-16, General division decision date December 08th 2022 decided in Decision 1 to refuse the Claimant permission because he has no arguable case, that the appeal would not be going forward. The applicant has submitted not only one requirement necessary under the possible 4 grounds needed to file, but the applicant also filed under all 4 grounds. The applicant feels the request is just and he has a case.

8. The Appeal Division erred as Follows

a. The Appeal Division erred in finding that the General Division relied on the relevant factors in making its determination that the Appellant does not qualify under leave to appeal the appeal or that the applicant does not have an arguable case in permitting leave to appeal. The Tribunal did not recognise or take into consideration documentation, information and submitted fact and evidence brought forth by the applicant thereby failing to weigh all other evidence respecting the Leave to Appeal and General divisions decision(s).

b. The appeal division erred in finding that the General Division applied the correct legal test to determine the Applicant's eligibility for benefits. The General Division found that the Applicant did not qualify for benefits in not applying their rules in qualification towards the Applicants application of benefit in that the applicant was sent home from work due to no availability of work, that he would be contacted at such time as work for him was available, and that the Applicant was put off work through no fault of his own. The Tribunal must determine whether the Applicant met within the rules of qualification.

The application will be supported by the following material.

9. The Affidavit of the Applicant and exhibits thereto.

10. Such other material and documentation as the Applicant may supply and advise and this Honorable Court may permit.

The applicant requests the Appeal Division of the Social Security Tribunal to send a certified copy of the materials in the possession of the Tribunal that were before the tribunal member when the decision for which judicial review is sought, to the Applicant and to the Registry:

March 15th 2023

Mark J Daggett
10 Malibou Street,
Lower Coverdale, New Brunswick,
E1J-1K4
(506)-850-1238
mjdaggett@rogers. com

I HEREBY CERTIFY that the above document is a true copy of
the original issued out of / filed in the Court on the _____
day of 20-March-2023 A.D. 20 ____
Dated this 20 day of March 20 23

Smith