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F	FEDERAL COURT
I	COUR FÉDÉRALE
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E	April 27, 2023
D	27 avril 2023
Ginette Lischenski	
VAN	1

Court File No.

FEDERAL COURT

BETWEEN:

ZORAN BOSKOVIC

Applicant

AND:

ATTORNEY GENERAL OF CANADA

Respondent

APPLICATION UNDER sections 18 and 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 Vancouver Federal Court Registry Office.

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.

Date: _____

Issued by: _____

(Registry Officer)

Address of local office: Registry of the Federal Courts
PO Box 1065, Pacific Centre
701 West Georgia Street
Vancouver, BC V7Y 1B6

To: **Deputy Attorney General of Canada**
c/o Department of Justice Canada
British Columbia Regional Office
900 - 840 Howe Street
Vancouver, BC V6Z 2S9

Application

This is an application for judicial review in respect of the Social Security Tribunal of Canada Appeal Division's (SST-AD) decisions dated March 28, 2023 (file number AD-23-153 and AD-23-154) refusing leave to appeal of the SST General Division (SST-GD) decisions (together, the "**Decisions**"). In the Decisions dated January 10, 2023, the SST GD had refused to overturn the denial of the Applicant's application for Employment Insurance (EI) regular benefits based on two grounds under the *Employment Insurance Act*.

- Availability for work (file number GE-22-2840) and
- Misconduct (file number GE-22-2841).

The Applicant made an initial claim for the Employment Insurance regular benefits on January 23, 2022. The applicant requests judicial review of the Decisions to proceed in a single proceeding under one Notice of Application considering the substance of the arguments in each case is the same.

The applicant makes application for:

1. An order quashing the Decisions of the Respondent and directing the Respondent to award EI benefits to the Applicant;
2. Alternatively, an order setting aside the March 28, 2023 Leave to Appeal decisions and referring the matter back to the Respondent for redetermination in accordance with such directions as this Court considers appropriate;
3. in either case, granting the applicant the cost of this application; and
4. granting such further and other relief that this Court deems just.

The grounds for the application are:

- A. The rationale for the Decisions and the outcome are unreasonable and were rendered in a manner that breached the Respondent's duty of procedural fairness to the Applicant;
- B. The Respondent erred in law by failing to consider the applicant's constitutionally protected rights under *the Charter of Rights and Freedoms* in reference to powers granted to the tribunal in S.64(1) "Powers of tribunal" *Department of Employment and Social Development Act*;
- C. The Respondent erred in law by relying on over-broad definitions or interpretation

of 'misconduct' and 'availability for work'. The Decisions are not in accordance with jurisprudence and are not supported in a case law applicable for the specific circumstances in the applicant's case. The SST and Canada Employment Insurance Commission (CEIC) have no jurisdiction or authority to lower the bar when determining what constitutes misconduct, the term not defined under *the Employment Insurance Act*, nor to deviate from the burden of proof in order to support a finding of misconduct or availability for work.

D. The Respondent erred in law and fact by failing to consider the totality of the evidence and circumstances in the applicant's case and failed to demonstrate a meaningful analysis of the essential elements and tests as prescribed in *the Digest of Benefit Entitlement Principles* (specifically Chapter 7 and Chapter 10) to support a finding of misconduct and availability for work.

This application will be supported by the following material:

- Applicant's Affidavit;
- Applicant's Memorandum of Argument ("Reasons for getting permission to appeal" documents submitted to the SST-AD as part of the Leave to Appeal Applications);
- such further and other evidence as may be advised and as this Court may permit.

The applicant requests from the Social Security Tribunal of Canada to send a certified copy of the following material that is in the possession of the SST to the applicant and to the Registry:

1. Tribunal File Numbers: AD-23-153 and AD-23-154; GE-22-2840 and GE-22-2841;
2. For both decisions copy of all documents that CEIC provided to the SST-GD as listed in GD3-1 "List of Documents included in the Reconsideration File" including the two submissions filed as GD4-1 "Representations of the Commission to the Social Security Tribunal - Employment Insurance Section";
3. Copy of any correspondence, guidance, policy or direction received by the Service Canada, Canada Employment Insurance Commission, Social Security Tribunal from the Respondent or the Minister of Employment, Workforce Development and Disability Inclusion as it pertains to interpretation of misconduct under the *EI Act* and vaccine mandates.
4. A complete copy of every document that was considered or relied on in making the Decisions or that otherwise directly or indirectly relates to the Decision, including but not limited to copies of all working papers and notes, emails, interoffice memoranda,

notes of telephone conversations, interviews or meetings, and any other documents that discuss, mention, refer or relate to the Decisions.

In City of Kamloops on April 24, 2023.



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[SOR/2021-151, s. 22](#)